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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

36<sup>th</sup> meeting  
Strasbourg, 15-18 November 2016

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**APPLICATION OF THE CONVENTION**  
**- Summary of case files and complaints -**

**OCTOBER 2016**

*Secretariat memorandum  
prepared by  
the Directorate of Democratic Governance*

## IMPLEMENTATION OF THE CONVENTION: FILES

### 1.1 Specific sites - Files open

#### ➤ 1995/6: Cyprus: Akamas Peninsula

This case concerns plans for the tourist development in the Peninsula of Akamas (Cyprus), with detrimental effect on an ecologically valuable area with many rare plant and animal species protected under the Bern Convention.

The case was first discussed at the 16<sup>th</sup> meeting of the Standing Committee in 1996. Two on-the-spot appraisals were carried out in 1997 and 2002 and a recommendation adopted in 1997 [Recommendation No. 63 (1997)] on the conservation of the Akamas peninsula in Cyprus and, in particular, of the nesting beaches of *Caretta caretta* and *Chelonia mydas*.

In 2008, the Standing Committee asked Cyprus to send the management plan for the area as soon as it would be ready, and wished that the area of Limni would also get adequate protection. The Committee asked Cyprus to fully implement Recommendation No. 63 (1997); to create a National Park and ensure the maintenance of the ecological integrity of the area; as well as to apply the ecosystem approach to the Akamas peninsula, including Limni.

At the 29<sup>th</sup> meeting of the Standing Committee, the delegate of Cyprus informed that there had been no great changes since the previous year.

In 2010 the Committee took note of the report presented by the Secretariat in the absence of delegate of Cyprus. It further took note of the observations and reports from the NGOs and decided to keep the file open while asking Cyprus to present a report for its next meeting; to send to the Secretariat as soon as possible the translation into English of the management plan for Limni area; to fully implement its Recommendation No. 63 (1997).

In August 2011 Cyprus authorities sent the translation of the Executive Summary of the Draft Management Plan for the Limni Area, specifying that this only referred to the Natura 2000 “Polis Gialia” site (thus not including the proposed “*Chersonisos Akama*” site) and informing that the government of Cyprus designated a wider area that would be managed via development regulations and restrictions, to ensure the highest possible protection of the peninsula.

The report from the NGO (Terra Cypria) informed that a formal notice letter and a reasoned opinion were sent by the EU to the Republic of Cyprus regarding the insufficient SPA proposal for the area. It is expected that the issue will be led to the European Court of Justice.

In the absence of a delegate from Cyprus at the 31<sup>st</sup> Standing Committee meeting, the Secretariat presented the case-file and called the attention of the Committee on the report on the management plan for the Natura 2000 “Polis Gialia” Natura 2000 site.

The representative of Terra Cypria argued that the size and extent of the Natura site was still being considered at the EU level. The proposal by the Cyprus government to regulate part of the area not as a Natura site, but through Town Planning regulations relating to land use (rather than conservation), was an indirect admission that the area is inadequate. She further considered that in the case of Limni, while a management plan exists, this was not implemented yet and, in any case, the area designated comprises such a narrow strip of land that it cannot protect turtles from human interventions taking place just beyond. Moreover, according to Terra Cypria, the plan proposed does not seem to include policy for foraging turtles. In both cases, developments are taking place all the time. The local authorities are allowing unsuitable activities and the threats to wildlife are continuing. Therefore, she urged that the file against Cyprus remains open.

These views were supported by the representative of MEDASSET, who pointed the attention of the Committee to deaths on the sea in different areas of Cyprus. The representative of BirdLife noted the importance of the Akamas Peninsula for some threatened birds, for which not enough Natura 2000 sites were designated.

The delegate of the European Union informed the Committee that the European Commission was analysing the information sent by Cyprus authorities in reply to a letter of formal notice for insufficient designation of the area. A decision on the follow-up to infringement procedure was expected by January 2012.

The Committee decided to keep the case file open requesting from Cyprus the full implementation of its Recommendation No. 63 (1997) as well as more information on the protection of sites in the whole of the Akamas Peninsula and Limni. The Committee asked the Secretariat to follow-up the file in close co-operation with the European Commission.

The Secretariat sent out official letters requesting updated detailed information to both the government of Cyprus and the NGO on 19<sup>th</sup> January 2012.

In a succinct report sent in March 2012 the government of Cyprus apologised for not having participated in the last Standing Committee meeting and expressed disagreement towards the NGO's claim of inadequate designation of both the Akamas and the "Polis Gialia" areas. More particularly regarding the latter, the authorities wanted to reassure the Committee that the developments surrounding the area were being controlled by the competent authorities and the procedures for granting building permits were observed. Furthermore, the Government stressed that maximum efforts were put in place to ensure the protection of birds, particularly by designating large SPAs.

Finally, the authorities informed that a full scientific package of information was under preparation in the framework of the complaint opened under the Commission and that this information would be forwarded at the same time to the Secretariat of the Bern Convention (around end of June).

The European Union also informed that, in the framework of a complaint on the issue of insufficient designation and protection of the Akamas area under the Natura 2000 network, a reply was received from Cypriot authorities following which the Commission issued a Letter of Formal Notice under Article 258 of the Treaty for insufficient designation of the area. The Commission analysed the reply and requested a number of further clarifications, after which they would decide on next steps.

The Bureau decided to keep the case file open and instructed the Secretariat to contact both the European Commission and Cyprus authorities by mid-July 2012 for information on further developments concerning the infringement procedure.

No substantial new information was submitted by the European Union, which in August 2012 was still expecting the reply of the authorities to its request of clarifications. No information was submitted by Cyprus authorities either.

Stressing the lack of new information the Bureau instructed the Secretariat to approach again Cyprus authorities and ensure that the scientific package of information related to the Akamas peninsula is forwarded to the Standing Committee. The complainant and the European Union are also invited to submit any relevant information available.

At the 32<sup>nd</sup> Standing Committee meeting the delegate of Cyprus informed that the Cyprus Department of Environment proceeded to the revision of the Akamas Peninsula mapping using high resolution satellite and aerial images. Additionally, site visits and sampling were also made. Once the information would be properly analysed, appropriate protection measures would be taken. The delegate of Cyprus concluded by reaffirming that, concerning the "Polis-Gialia" area, the authorities were in disagreement with the claim that the designated area was inadequate. However, he informed that Cyprus was in the process of reviewing the monitoring and inspection protocols in place so to ensure adequate surveillance of the area.

The delegate of Norway stressed that the fact that the file had been open for sixteen years was a sign that the actions undertaken by the authorities were not enough effective to solve the conservation problems encountered. There was a regrettable lack of progress, an opinion which was shared by the representatives of the NGOs.

The Committee decided to keep the case file open and encouraged Cyprus to fully implement its Recommendation N°63 (1997). The Committee further instructed the Secretariat to continue co-ordination with the European Union on this complaint.

In March 2013 the European Commission informed that it had received new scientific data both from the Cypriot authorities and NGOs. The information showed controversies in its conclusions. Hence, the Commission services informed being in the process of assessing the results in the attempt of finding the best solution to resolve the case.

The Secretariat requested Cyprus authorities to report after the first Bureau meeting.

In a letter received in July 2013, Cyprus authorities communicated that the Department of Environment was finalising the mapping of the Akamas Peninsula area and that the results would be forwarded to the Secretariat once they would be published. Moreover, they affirmed being in the process of conducting a Management Plan for the Akamas Peninsula area, which was expected to be completed by the end of 2013.

Also in July, the complainant requested the Bureau to continue keeping the case under scrutiny first of all because the Akamas issue was being examined by the European Commission as a matter of “insufficient designation”, meaning that the production of a management plan for the area designated would presumably be insufficient for solving the problem alone. Secondly, the complainant informed that a local developer proposed the construction of two golf courses surrounded by villas and hotels in the adjoining Limni area, which could presumably directly affect the turtles nesting there. The complainant further informed that the Government’s failure to take a firm stance about the distance of installations from the foreshore had been the subject of a second and different formal complaint to the Commission.

In its update, the European Commission informed having received extensive additional scientific information both from the Cyprus authorities and the NGOs which was under assessment to determine whether the SCI has been (on the basis of scientific evidence) sufficiently designated or not.

At its September meeting the Bureau assessed the case for the first time in 2013. The Bureau welcomed the information provided by the authorities on some progress towards the mapping and management plan of the Akamas Peninsula, but considered it necessary to follow the developments related to the complaint regarding the presumed insufficient designation of the SCI. The matter was forwarded to the Standing Committee.

Unfortunately, Cyprus could not attend last Standing Committee meeting and did not address updated information. However, the complainant presented the NGO point of view insisting on the investigation by the European Commission concerning the presumed insufficient designation of the Natura 2000 areas as a strong evidence of the possible inadequate protection of both Akamas Peninsula and Limni. Moreover, the complainant asked the Committee to make a number of recommendations to the attention of Cyprus authorities, including to promptly revising and extending the current boundaries for the areas, regulating development in the adjacent area, adopting a management plan of Akamas with all necessary measures for monitoring and control of habitats, reacting with adequate measures against illegal constructions and unsuitable activities on the surrounding beaches, and adopting an early warning system in order to closely monitor these areas, and the rest of the Natura 2000 sites, and prevent human destruction from taking place.

The Committee decided to keep the case file open and encouraged Cyprus to fully implement its Recommendation No. 63 (1997) and to report namely on the concrete measures implemented to avoid further deterioration of the concerned habitats. Furthermore, and taking into account the urgent need of protecting these unique sites from further destruction, the Committee invited Cyprus government to undertake any necessary step aimed at providing an early warning system against illegal damage and to inform the Committee on their implementation.

The decision of the Committee was forwarded by the Secretariat to the authorities in January 2014. By the end of March, Cyprus authorities addressed an updated report affirming that the areas proposed as SCI for Akamas and Limni are considered adequate and that further development of the area was subject to the necessary impact assessment as foreseen by both international and national legislation.

The authorities further informed that the Management Plan for the “Polis-Yialia” Natura 2000 site was being implemented but the management plan for the Akamas Natura 2000 site (expected to be completed by the end of 2013) was still under preparation.

Additionally, the authorities informed that a wider residential and rural area around the Akamas Natura site would be subject to special regulations and restrictions so to ensure the highest possible protection of the peninsula.

Besides, the report provided short but specific information on the implementation of operational paragraphs 7, 9 and 10 of the Standing Committee Recommendation No. 63 (1997), which are specific to Lara-Toxeftra Reserve area and to seagrass communities in Akamas.

Finally, the government report also addressed the recommendation by the Standing Committee to adopt an early warning system against illegal damage and considered that the regular monitoring mechanism already in place is both appropriate and effective. However, the authorities declared to be ready to evaluate any specific recommendations regarding the issue.

In an e-mail sent on 28<sup>th</sup> March, Terra Cypria informed being in disagreement with several points and committed to address to a detailed note to present its arguments. The Bureau decided to keep the case file open and to re-assess it at its September meeting, in order to be able to take into account the position of the NGO. It further instructed the Secretariat to contact the European Union for updated information.

The report received by the NGO mid-April 2014 analysed and contradicted the information submitted by the authorities, by affirming that:

- ✓ A huge part of the Akamas Peninsula has been excluded from the Natura 2000 network leaving very important habitats and species unprotected. The fact that the European Commission opened a case for presumed insufficient designation of the area was considered to be the evidence that the arguments submitted by the NGO are strong and science-based. Moreover, the NGO claimed the largely insufficient designation of the Limni area which enabled for the delivery of licences authorising the development of a golf course and a multi-villa project, adjacent to the Natura 2000 area, with a probable impact on the nesting beaches of the *Caretta caretta*.
- ✓ The Proposed Plan for Polis-Gialia does not contain serious implementation actions and therefore does not meet the requirements set by national law for the adequacy of management plans.
- ✓ The development regulations and restrictions announced by the Government around the Akamas Natura 2000 site were considered by the NGO to be part of the regular Town Planning framework and therefore not inspired by biodiversity conservation’s considerations. In the NGO’s views, since the designation of the Natura 2000 site is supposed to be too exiguous, leaving out areas with very important habitats, a simple Town Planning framework implemented without the involvement of a conservation agency will be insufficient to ensure the proper conservation of the area.

- ✓ Regarding the information submitted by the authorities on the implementation of the Standing Committee's recommendations specific to Lara-Toxeftra Reserve, the NGO questioned the regularity and quality of the monitoring carried out by the Fisheries Department, as well as the data sent to minimise the presumed disturbance of the Thanos hotel complex.

Finally, the NGO considered that, taking into consideration the recent experience of situations where the interventions of the authorities against biodiversity disturbance and damage failed to be carried out before damage was done, the Republic of Cyprus should seriously consider to set up an early warning system and to put in place a team of wardens with full legal powers.

The request of the NGO to the Bureau was to keep the file open.

On its side, the European Union informed being in the process of analysing the classification of special protection areas (SPAs) of the Akamas area on the basis of the recent update of the list of Important Bird Areas in Cyprus published by Birdlife. Moreover, the Commission was assessing the alleged failure to designate the Akamas area under the Habitats Directive as a Site of Community Importance (SCI), having requested and received further technical clarifications as regards the mapping of habitat types in question as well as information on the preparation of the management plan for the broader Akamas area.

As regards the tourist development in Limni (Polis-Gyalia Natura 2000 site) the Commission investigated through an EU Pilot the measures taken to ensure compliance of the planned development with Articles 6 and 12 of the Habitats Directive. The issue was under assessment in September 2014.

Finally, in the last report submitted by Cyprus authorities at the request of the Secretariat, the latter regretted not having received any evidence from the NGO showing the insufficient designation of the Akamas Peninsula and therefore not being in a position to either remedy or counteract any possible inaccuracies. Moreover, the authorities were confident that the designated area would be considered as adequate, and provided all relevant scientific information to the European Commission in this respect. They also informed that the Akamas Management Plan was at its final stages of completion, pending the public consultation procedure which was expected to take place in January 2015.

The authorities further confirmed that an EU Pilot was ongoing on Polis-Gyalia situation and that the procedure was thus confidential. In addition, the authorities defended the quality and effectiveness of the Management Plan which is intended to ensure the highest possible protection of the peninsula. They further informed that the procedure for the site's declaration to SAC would be completed by the end of 2014 as foreseen and that the relevant Ministerial decree on the restrictions and permitted actions within the site would be ready within the first three months of 2015.

The report of the authorities contradicted also the allegations concerning the lack of patrolling in Lara-Toxeftra Reserve for which a specific Turtle Monitoring Programme had been assigned every year to experts through a tendering procedure. The obligations and responsibilities of the experts are considered to be in compliance with the regulations.

Regarding the adoption of an early warning system, the authorities considered that the regular monitoring of the sites was still the most efficient measure, together with the prosecution of illegal acts. However, the Republic of Cyprus informed being in the process of studying possible amendments to the Nature Law so to allow for extrajudicial measures following damages to sites, habitats and species. In the light of the most recent information the Bureau decided to forward the case to the Standing Committee.

Based on the information provided in writing by the authorities of Cyprus, as well as on the report orally presented by the complainant the Committee decided to keep the file open and asked Cyprus authorities to keep the Bureau informed on any relevant development.

In June 2015 Cyprus authorities sent a one page letter informing that:

- ✓ The procedure for the declaration of Polis-Gialia as SAC had been again delayed, and that the Ministerial decree fixing the rules for the actions to be permitted in the site was expected to be ready by the end of 2015 now;
- ✓ The public consultations for the Akamas management plan took place as foreseen in January 2015 but the written opinions received are still being processed;
- ✓ The management of the rural area established outside the Akamas Natura site as a way to ensure higher protection to the peninsula is proceeding well, with the establishment of cycling routes, camping, and environmental awareness centres.

The complainant replied to this report emphasising on the delays, on the continuous pressures for building in the protected area, and on the need to keep the file open also in light of the on-going EU infringement procedure.

Finally, the European Union informed that on 30 April 2015 it had issued a Reasoned Opinion against Cyprus as it considered that the breaches of the Habitats Directive concerning the tourist development in Limni area persisted. As regards the other aspects of the case, the Commission received only limited information and is now waiting for the requested clarifications.

At the 35<sup>th</sup> Standing Committee meeting in 2015, delegates regretted the absence of Cyprus authorities, as well as of fully informative reports to the Bureau from both sides. After taking note of the concerns expressed by Terra Cypria supported by MEDASSET, and of the information presented by the delegate of the European Union, the Committee decided to keep the case-file open and invited both the authorities and the complainant to improve communication with the Secretariat in the coming months. A letter in this sense was addressed by the Secretariat to both sides end of December 2015.

However, in January this year, the Secretariat sent to national authorities a second letter to express concerns about the recent news reported by the press regarding the decisions taken by the Council of Ministers of the Republic of Cyprus on 11<sup>th</sup> January 2016, presumably implying:

1. The exclusion of private properties from the recently declared “Akamas National Forest Park”, opening the possibility for further development;
2. The preparation of a new Local Plan, to be drafted by the Department of Town Planning and Housing, that would allow the licensing of holiday homes, hotels and other tourist developments within the Akamas Natura 2000 site, in clear contradiction with the Akamas management plan whose main objective is to ensure the sustainable development of the area.

In its correspondence, the Secretariat stressed that the recent decisions, particularly the new local plan, might lead to the further expansion of the urban development zones for construction of additional houses and tourism facilities. After recalling the background of the case – and with the authorisation of the Bureau, the Secretariat requested the agreement of the authorities for an on-the-spot appraisal in order to gather additional information as well as to examine ways on how to improve the situation.

In reply to both letters the authorities requested an extension of the reporting deadline (delaying it until after the Bureau meeting), and committed to address a reply on the on-the-spot appraisal’s request before the first Bureau meeting.

On 4<sup>th</sup> April 2016, the Cyprus authorities sent their report, informing that according to them, some of the content of Recommendation No. 63 (1997) needs to be re-evaluated as “some issues may be deemed as obsolete or no longer relevant in light of the EU member state status of Cyprus”.

The report answered point by point to Recommendation No. 63 (1997). It further explains that the designation of the SCI Akamas and the SCI Polis-Gialia was expected in the following three months (by July 2016). A draft Management Plan for the Akamas SPA is also ready and that its public consultation was scheduled to start in May 2016. The adoption of the Plan is expected by the end of 2016.

Therefore, the Cyprus authorities requested the Standing Committee and Bureau of the Convention to wait until the establishment of the management system of the area is decided upon. They expressed they are ready to consider the On-the-spot appraisal option if this is considered needed.

The report also confirmed that the a new Ministerial Decree for the Akamas area was issued and that this decree foresees 1) an immediate implementation of two aspects of the MP relating to the habitats and species conservation and promotion (a total of 31 measures); 2) that the forest and part of the state land are to be declared as national Park and 3) that a mandate was given to the Department of Town Planning to prepare a new zoning Plan for the peninsula within 18 months. The authorities consider that these measures as a positive step towards resolving the long-standing issues of Akamas and a political will to reach a solution also though the re-visiting of the ownership issue.

On 10-11 October 2016, the on-the-spot appraisal to the area took place in the presence of an independent expert and a member of the Secretariat. The outcomes of the visit will be presented in a written report and orally before the Committee at its 36<sup>th</sup> meeting. A new draft Recommendation, aimed at replacing Recommendation No. 63 (1997) is expected to be presented for discussion and if appropriate, adoption by the Committee.

➤ **2004/1: Ukraine: Project for a waterway in the Bystroe estuary (Danube delta)**

This case concerns the excavation of a shipping canal in Bystroe estuary of the Danube delta in Ukraine, which is likely to affect adversely both the Ukrainian Danube Biosphere Reserve – the most important of Ukraine’s wetlands – and the whole Danube delta dynamics.

The first phase of the project was conducted in 2004.

The same year the Standing Committee adopted Recommendation No.111 (2004) on the proposed navigable waterway through the Bystroe estuary (Danube Delta), inviting Ukraine to suspend works, except for the completion of phase I, and not to proceed with phase II of the project until certain conditions were met.

In 2008, Ukraine informed the Secretariat of the repeal of the Final Decision regarding Phase II of the Project, confirmed that the amended and updated EIA documentation would be sent to the Secretariat, and that measures would be undertaken to ensure public consultation and participation on this Project. Furthermore, the Secretariat was informed that a document entitled “Draft Time-Schedule” had been signed with the Romanian authorities for further mutual implementation of the steps to be taken by both countries.

In March 2009, the Ukrainian authorities reported to the Secretariat confirming the repeal of the Final Decision regarding Phase II of the Project, in line with Recommendation No.111 (2004) of Bern Convention. The report also confirmed that “the works on the Phase II never started and are not going to start until the appropriate procedures are being implemented”.

At the 2009 meeting of the Standing Committee, the delegate of Ukraine outlined the measures taken by his government, including the initiative to collaborate with the International Commission on the Protection of the Danube River regarding research and monitoring of the transboundary part of the Danube Delta. The Standing Committee welcomed the positive co-operation underway between Ukraine and Romania, but it agreed to keep the case file open and asked Ukraine to continue to report to in 2010.

In March 2010, the European Union informed the Council of Europe that Ukraine adopted a final decision on the project at the end of January 2010. Ukraine decided to start works related to the full-scale implementation of the Danube-Black Sea Navigation Route, thus initiating the implementation of Phase II of the Bystroe Channel project.

The Secretariat asked Ukrainian authorities to inform on the issue; however, the national report was only sent on 1<sup>st</sup> December 2010, a day before the Standing Committee meeting.



Following a long discussion and after calling for an improved and regular exchange of information with the Secretariat, the Standing Committee decided to keep the case file open and agreed to set-up a Select Group of Experts to facilitate dialogue on the issue. The Group should have met after relevant Parties and the Chair of the Standing Committee agree on the terms of reference. These were sent to both Parties in January 2011; however, the Ukrainian Party was not in a position to agree on them.

In September 2011 the Bureau expressed again strong dissatisfaction towards the lack of communication from Ukrainian authorities and decided to keep the case-file opened, as well as to request to Ukraine a detailed report on the state of implementation of the Danube-Black Sea Navigation Route, as well as on the compliance with the Standing Committee Recommendation No. 111 (2004).

At the 31<sup>st</sup> Standing Committee meeting, the delegate of Ukraine presented the government report, stressing that - according to the data collected through the monitoring process - no negative impacts for the Bern Convention species and habitats, as well as for the Romanian delta ecosystems could be identified in relation with the Bystroe Channel project. He further recalled that Ukraine proposed to elaborate a common Plan for the management of the basin of the Danube Delta within the framework of the International Commission for the Protection of Danube River. He informed about the content of the EIA which was elaborated by a pool of independent experts and concluded by stating that Phase II of the Bystroe Channel project had not started.

The delegate of Romania contested the quality of the EIA and, although he welcomed the monitoring project, he further stressed that this was not sufficient to erase the concerns related to the digging of a channel in the Danube delta. He concluded by recalling that both the Aarhus and Espoo Convention issued warnings to Ukraine for possible non-compliance.

The Committee decided to keep the case-file open asking the three concerned Parties for updated reports on the implementation of the provisions included in Recommendation No. 111 (2004).

In February 2012 **Ukrainian authorities** sent a full report highlighting that the works related to the implementation of Phase II of the Bystroe Channel project did not start. Moreover, according to the report, Ukraine prepared an EIA which was handed to the Government of Romania and discussed by a panel of international experts before being amended – in 2008 - according to the comments made; a separate analysis of the impacts of the full implementation of the Channel in a transboundary context was also available; public hearings on the issue were organised without the cooperation of the Romanian government. Ukrainian government further affirmed having looked into all possible alternatives to the route of the waterway before deciding to consider the Bystroe one.

Regarding the ecological compensation and mitigation of possible damages to the environment, the Ukrainian government informed having identified specific measures to mitigate the potential negative transboundary environmental impact of the Bystroe project.

Finally Ukraine informed of a number of initiatives implemented since 2004, including long-term hydrobiological studies for 2004-2011 whose conclusions would allow affirming the absence of direct impact of the renewing and maintenance of waterway Danube Black Sea to the biotic communities of phytoplankton, zooplankton, zoobenthos, fish fauna, with only a few local and limited exceptions.

The report submitted in February 2012 by the **authorities of the Republic of Moldova** informed on different mechanisms for trilateral co-operation among which the implementation of the Agreement for the Establishment and Management of a Cross-Border Protected Area between the Republic of Moldova, Romania and Ukraine in the Danube Delta and the Lower Prut Nature Protected Areas. The report stressed the strong political will of the Joint Commission towards the full implementation of existing legal instruments, scientific and technical co-operation at the Delta level, a stable socio-economic context in the Delta, exchange of information, data and methodologies, and long-term harmonised monitoring.

In a report submitted in March 2012 the **authorities of Romania** informed that Ukraine had finalised the implementation of Phase I of the Bystroe project and completed some of the works foreseen in the framework of Phase II (such as the retaining dam off the mouth of the Bystroe branch of the Danube,

which was continuously extended until it reached the length envisaged for Phase II of the project). Romanian authorities recognised that Ukraine had taken some positive steps in order to comply with its obligations. However, they pointed out that the works in the area had steadily continued (including maintenance dredging to reach navigational depths and work at the engineering structures in the Ukrainian side). The authorities further regretted that the bilateral cooperation was interrupted with the notification, by the authorities of Ukraine, of the “final decision” regarding the construction of the deep navigation canal, without taking into account the concern expressed by the Romanian authorities (including the persistence of gaps in the EIA). Romania maintained its view that, in its design, the project posed significant risks of an adverse impact on the environment, including on the territory of Romania.

The report further stressed that the decision V/4 adopted by the Meeting of the Parties to the Espoo Convention at its fifth session (Geneva, 20-23 June 2011) endorsed the finding of the Implementation Committee established under this Convention that, while Ukraine had fulfilled some of its obligations under paragraph 10 of decision IV/2 with respect to both phases of the Bystroe Canal project, it had not fulfilled all of these obligations. The finding of Implementation Committee was caused by the failure of Ukraine to comply with the request of the Committee to provide a written statement confirming clearly and unambiguously that the conditions imposed in the Decision IV/2 of the Meeting of the Parties have been met.

The Bureau acknowledged good progress in communication from all the concerned Parties, who generally submitted their reports within the deadlines and focussed on key information. However, it requested to Ukrainian authorities to make available the English translation of both the EIA and the analysis of the impacts of the full implementation of the Channel in a transboundary context.

In August 2012 Ukraine sent both the EIA (as amended in 2009) and the analysis of the impact in a transboundary context. These documents concluded that the Bystroe option would represent “the least-impact” alternative to the Unesco Danube Biosphere reserve (DBR) in terms of long-term viability with respect to the sustainable natural resource management and suitable governance of anthropogenic activities taking place in the areas of the Bystroe Branch.

After assessing the requested documents, the Bureau - meeting in September – decided to keep the case file open and forwarded the EIAs and its annexes to the Secretariats of other relevant international Agreements for comments.

By the 32<sup>nd</sup> Standing Committee meeting only the WWF was able to provide the Secretariat with a written opinion. According to WWF analysis, the EIA seemed to comply with the formal requirements of EIA but actually failed to address concrete relevant issues, as for instance: lack of assessment of emergency situations, persistence of knowledge gaps and high level of uncertainties; some concerns were also expressed at the level of the post-project analysis of results of the monitoring and management programmes, the social and economic forecasts, the latest hydro-morphological changes in the Delta, the cumulative environmental impact in the transboundary context. Moreover, WWF considered that the list of measures to reduce the negative impact did not contain institutional arrangements.

The delegate of Ukraine presented the EIA stressing that the document went through the assessment of 17 international experts. He explained that the EIA addressed additional aspects that were not considered in previous reports, including a rationale conduct for the transboundary EIA process, information on the socio-economic situation in the areas of the Lower Danube Basin, scientific projections to determine the potential impact of Phase II on the restoration of the environment in the affected zones, an updated assessment of transboundary aspects of some project activities and their habitat loss, considerations of alternative navigation routes and their possible environmental impact. Annex II had been particularly developed to secure answers to questions and comments expressed by the Romanian NGOs, International Non-Governmental Organizations, Romanian Public and representatives of the Romanian authorities. The delegate of Ukraine concluded by informing that the Ramsar Convention stopped monitoring this file after considering that the conservation of the concerned wetlands is satisfactory.

The delegate of Romania thanked Ukrainian authorities for the efforts in improving communication. Yet, he noted several gaps and shortcoming in the EIA. For instance, the mathematical modelling used by Ukraine, based on data which were not transmitted to the Romanian side, despite several requests in this sense. Moreover, according to the authorities of Romania, the EIA focused almost exclusively on the impact of the works on the Ukrainian side of the Delta while the transboundary impact had not been properly assessed. In conclusion, the authorities of Romania were completely-reassured by the EIA since this did not address all the environmental consequences rising up from the project and the consultations undertaken under the Espoo Convention were not duly taken into account. Romania finally requested that the impact of project is further assessed before continuing with the implementation of Phase II.

Following a ballot, the Committee decided to keep the case file open and instructed the Secretariat to reiterate its requests for feedback to the other concerned stakeholders.

In January 2013 the Secretariat addressed a reminder to the EU, UNESCO, the Espoo Convention, the WCMC and the Ramsar Convention for their views on the EIA.

The Ramsar Convention confirmed that the file opened under Article 3.2 of the Convention (human-induced negative changes) had been closed, together with the file related to the Dniestr River Delta, after the submission of information and reports by Ukraine at the occasion of the 11<sup>th</sup> meeting of the Conference of the Parties to the Ramsar Convention. The decision was based both on the information submitted and on the consideration that the Ramsar Administrative Authority in Kyiv took the responsibility to declare publicly that no negative change will occur through the planned works.

Regarding the request of comments on the EIA, the Ramsar Secretariat suggested that a meaningful and thorough analysis of this document would need a specifically committed study for which apposite funds should be allocated.

The report submitted in March 2013 by the European Commission summarised the information provided in previous reporting while waiting for the possible adoption by the Parliament of Ukraine of the draft law on Environmental Impact Assessment in Transboundary Context.

The Bureau held a long discussion on the possible follow-up to this complaint, including options such as: sending the file to the Standing Committee as it stand; setting up a working group tasked to analyse the EIA, or even closing the file in order to ensure coherence with the position taken by the Ramsar Convention. However, taking into account the outstanding biological diversity of the concerned area, and willing to find a satisfactory solution for all, the Bureau instructed the Secretariat to contact the three concerned States with the request of convening as soon as possible a meeting of the Joint Commission in order to inform the Standing Committee on the state of transboundary cooperation.

In the report submitted in July 2013, Ukrainian authorities informed having sent official letters to the correspondent authorities of Romania and the Republic of Moldova, inviting them to convene a meeting of the Joint Commission, according to what the Bureau requested.

The report submitted end of August by the authorities of the Republic of Moldova informed that a meeting between the Deputy Minister of Environment (Republic of Moldova), representatives of the Ministry of Foreign Affairs and European Integration (Republic of Moldova) and representatives of the Embassy of Ukraine in the Republic of Moldova took place in June 2013.

The meeting was organised at the request of the Ukrainian Embassy in Chisinau who presented the measures taken by Ukraine to comply with the recommendations made by the Standing Committee to the Bern Convention. The report further recalled that the last meeting of the Commission was convened on 11 March 2011. According to the Agreement, by the end of 2011 Romania had to hold a meeting, but this did not take place as Ukraine was unable to attend. The rotation order for the Chair should be Romania, Ukraine, and the Republic of Moldova, but the report affirmed that none of the Parties took the initiative of officially convening a meeting since 2011.

In a letter sent in August 2013, the Permanent Representative of Romania before the Council of Europe informed that Romania was taking all necessary steps for convening a meeting of the Joint Commission. Moreover, the letter informed that in March 2013 Ukraine provided the Danube Commission Secretariat with the details of the full implementation of the “Danube – Black Sea” canal, in apparent contradiction with what stated at the previous Standing Committee Meeting. The deadline for the completion of the work had been established at 30 months. The letter further recalled that the Decision of Ukrainian authorities to finalise the Bystroe Channel project had not been cancelled or suspended and thus there was no national impediment to its implementation. The Permanent Representative concluded by noting that the attention given to this complaint by a number of International treaties initiated a transboundary consultation process which was still in progress.

In addition, in August 2013 the Secretariat received the reply of the Espoo Convention, recalling that the matter had been subject to findings and recommendations by the Implementation Committee since Romania expressed its concern, back in 2004. Two decisions by the MoP were also taken on the issue, declaring effective the caution to the Government of Ukraine (in 2011) and requesting the authorities of this country to inform on steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, as well as on the implementation of the strategy of the Government of Ukraine to implement the Espoo Convention.

The Secretariat of the Espoo Convention also recalled that, in November 2012, the Implementation Committee decided to start drafting recommendations to assist Ukraine in complying with its obligations under the Convention at its twenty-eighth session (10–12 September 2013). The recommendations would be drafted on the basis of the information submitted by Ukraine in December 2012, as well as on the additional information that Ukraine was requested to send by 27 August 2013.

At its meeting in September the Bureau welcomed the reports submitted by the Parties, but noted that there was still no proposal or agreement on a possible date for a meeting of the Joint Commission, and regretted the lengthy and somehow dispersed dialogue on this issue. It recalled that the Joint Commission was set up to provide a framework for a true and constructive cooperation and requested the Parties to show real commitment in this sense.

The Bureau decided to keep the file open and requested again that three concerned states – Ukraine, Romania and the Republic of Moldova – convene as soon as possible a meeting of the Joint Commission and inform the Standing Committee at least on the date of the meeting as well as on the state of transboundary cooperation.

At the 33<sup>rd</sup> Standing Committee meeting, the delegate of Ukraine informed that a meeting of the Joint Commission was organised on 28<sup>th</sup> November, hosted by Romania. He said that the meeting was indeed a good opportunity for discussing national and international monitoring results, as well as the development of projects and joint activities to be implemented in the short term. The meeting served to plan future co-operation of the three concerned Parties based on an agreed list of priority activities. The Commission highlighted the importance of the common bilateral and trilateral large scale joint projects, including projects within the framework of the EU Strategy for the Danube Region and future Cross border Co-operation Programmes funded by the European Union.

The delegate further confirmed that the authorities suspended activities in the area after the Phase 1 of the project and did not start the new phase. The delegate stressed that Ukraine was taking appropriate measures to enhance the conservation status of the Danube Biosphere Reserve and to expand its territory and concluded by asking to note the efforts shown by his country to honour the provisions of the Standing Committee.

The delegate of Romania agreed that the second meeting of the Joint Commission was positive in the sense that some progress was made by the three Parties to jointly find a way forward in respect of the issue of the canal. He stressed that on that occasion Romania asked Ukraine to provide information on the works carried out so far and on the authorities' intention to proceed with the full scale implementation of the project. However, Romania reiterated its request to receive a clear answer on a decision of the Ukrainian competent authorities to implement or renounce to implement the Phase II of the project.

Furthermore, the delegate of Romania recalled the results of the studies and monitoring activity carried out by his authorities on the works implemented until now in the Ukrainian side of the Canal, showing that the Bystroe Project had already a significant impact on the Romanian territory, particularly for what concerns the hydrological conditions of the area. Therefore he reiterated Romania's strong opposition to the implementation of Phase II of the project, and underlined the need for the impact of the works on the Romanian territory to be properly and comprehensively assessed by the Ukrainian side.

The Committee welcomed the dialogue and co-operation re-established by the three concerned Parties and noted with satisfaction that a third meeting of the Commission should be organised and held in Ukraine in May 2014. Considering that it could be useful to examine the report of the meeting of the Joint Commission, and noting that the matter would also be assessed by the Committee of the ESPOO Convention at its 29<sup>th</sup> meeting the Committee decided to keep the case file open and gave mandate to the Bureau for ensuring the follow-up to this complaint until the next Standing Committee meeting.

The Secretariat received the report of the 2<sup>nd</sup> meeting of the Joint Commission already in January 2014. The latter confirmed the adoption of a list of priority activities based on a proposal by Romania. These included the coordination of the initiatives of the parties concerning the natural protected area of the Danube Delta and the Lower Prut, the development of joint management and monitoring programmes, the identification of possible EU grants, the possible creation of a trilateral biosphere reserve, among others. The meeting was also the occasion for an exchange of knowledge and information on the status of the respective nationally protected areas subject to the Agreement, as well as on the advancement of the common projects developed within the framework of the trilateral cooperation. However, from the report it was clear that Ukraine and Romania could not find agreement on the findings of the respective impact assessments.

In March 2014, the Espoo Convention provided the Secretariat with an updated report, informing about the latest developments following the 29<sup>th</sup> session of the Espoo Committee meeting. In fact, although Ukraine had submitted its report within the deadlines fixed under the Espoo Convention, the Committee at its December session found that the information provided was not sufficient to allow for the conclusions on the matter. The issue was reported at the February session, the last before the MoP (June 2014) where the Committee was obliged to reach some conclusions. Although the Committee welcomed the timely submission by Ukraine of the requested information, it regretted that Ukraine had still failed to provide complete and specific information on the progress concerning the implementation of the ESPOO Convention, the adoption of the necessary legislation, and the specific actions to bring the project for the Bystroe Canal Project in full compliance with the Convention. Moreover, the Committee considered that the decisions by Ukraine to continue dredging activities might indicate a further breach of the obligations under the Espoo Convention. The conclusion of the Committee was that it had no basis to recommend to the MOP to revise its recommendations set out in decision V/4 concerning compliance by Ukraine, including that the caution issued at MOP-4 remain effective. The decision was then fully endorsed by the Parties at MOP-4.

In April 2014 the Bureau deeply discussed this case-file and regretted to admit the difficulties faced by the governing bodies of the Convention in dealing with this complaint.

Among the major obstacles identified against a satisfactory solution of the case, the Bureau noted again the lack of clarity regarding the situation on the ground, the different views of the two main concerned Parties regarding the possible negative impact of the work on the ecosystem, and the diverging positions regarding the status of implementation of the Phase II of the project. In addition, the Bureau

recognised again the need to urgently work towards reducing at minimum levels any negative impact and ensure that adequate compensatory measures for the works already finalised are implemented and monitored by a supervisory body.

In the light of the above, the Bureau decided to keep the case-file open and instructed the Secretariat to prepare a short note about how the Convention has in the past dealt with similar case-files, and possible scenarios for handling the present one at its next Committee meeting.

The Secretariat prepared an Information Note on the Bystroe Case-file, including a short reminder of the procedure set-up for dealing with case-files in general, as well as factual information regarding complaint n° 1986/8 on *Caretta caretta* in Laganas Bay, Greece. Moreover, the note provided an overview of the options that the Standing Committee could have regarding the present complaint, including the advantages and disadvantages of each option, as well as a summary of the main decisions of the Standing Committee since the case was open, back in 2004.

Among the possible scenarios the Secretariat identified the following three:

- a) Keeping the case file open;
- b) Closing the file with a declaration of failure to comply with the decisions and recommendations of the Standing Committee. The Committee might also wish to emphasise on the right foreseen under Article 18 and on the relevance of cooperation for the effective exploitation of the case-file system.
- c) Closing the file as mentioned above, with a recommendation for the implementation of compensatory and mitigation measures to reduce the impact of the works already realised. The task of identifying the relevant compensatory and mitigation measures could be entrusted to the Joint Commission as a way to ensure that all concerned Parties take the responsibility in the resolution of the problem, and the ownership of the recommended actions. The Joint Commission could be called to report to the Standing Committee on an annual basis.

After a careful discussion, the Bureau decided to advise the Standing Committee to keep the case-file open for one more year, in order to be able to gather objective and specific information on the situation, also in view of the preparation of a possible new draft Recommendation, based on the views, data and opinion of the Joint Commission. At the last Standing Committee meeting the discussions focussed on how to solve this complaint. The Committee agreed that for a solution to be found, Parties must be able to receive and assess tangible results of the cooperation between the Parties, including their own proposals of possible ways out.

Therefore the Committee decided to keep the case-file open for one more year, and to request to the Trilateral Commission to organise a meeting in the first half of 2015. The Trilateral Commission should address the issues at stake in the Bystroe estuary case file, and forward a report to the Bureau for assessment at its meeting in September 2015. The Bureau will then take a position on the case-file and prepare a proposal.

The Secretariat forwarded the decision of the Standing Committee to the three concerned Parties, with the request of updating the Bureau on the state of preparation of the next meeting of the Trilateral Commission.

In reply to this, Ukraine informed that the Ukrainian Ministry of Environment invited the correspondent authorities of both Romania and the Republic of Moldova to hold the third meeting of the Joint Commission on 27-28 May 2015. The items to be discussed would be the implementation of Recommendation No. 111 (2004), as well as the conservation status of key species present in the Danube Delta and listed in the annexes of the Bern Convention. The meeting should also serve for an exchange of information in light of the preparation of a series of recommended actions intended to improve the situation in the area.

At its meeting in March 2015 the Bureau congratulated the parties for their cooperation and asked Ukrainian authorities to forward the report of the meeting of the Trilateral Commission, together with a list of agreed recommended actions.

In a letter received on 1<sup>st</sup> September, Ukrainian authorities informed about their approval of a draft Protocol resulting from the meeting of the Trilateral Commission. The Protocol contains the Commission's proposals on priority activities for the next period, as agreed by the concerned parties.

The document has been addressed by the Ministry of Foreign Affairs of Ukraine for signature to the Ministries of Environment of the Republic of Moldova and Romania.

Among the main decisions, the parties agreed to:

1. Set-up a specific working group to develop and implement detailed monitoring programmes for fish, with special focus on the sturgeon. An additional effort will be done for harmonising national legislations with EU standards, as well as for addressing poaching and bycatch;
2. Implement joint monitoring programmes to assess the conservation status of strictly protected species under the Bern Convention, identify the causes of impacts on these, and monitor the environmental state of the Danube Delta (the latter with the support of the EU, where possible). In this respect, the joint Commission decided to set-up a Working Group that will prepare an implementation plan based on a draft Scientific Monitoring Programme prepared and proposed by Romania. The latter also offered resources to carry out the monitoring;
3. Convene next meeting of the joint Commission in Odessa, Ukraine, in October 2015.

The parties further discussed issues related to possible EU grants for trilateral projects; steps towards the creation of a trilateral biosphere reserve and its future common coordination; the possibility of creating a permanent Secretariat for the Joint Commission, to enable efficient joint management of the relevant protected areas.

On the present case-file, Ukraine presented the results of the monitoring carried out over the period 2004-2014, reiterating that this included – among others - the assessment of the impact of the deep-water navigable channel on the environment, as well as the assessment of cumulative impacts of shipping upon the condition of land and water ecosystems. Controls of water quality and hydrological conditions, monitoring of fish fauna, and long-term observations of dynamics of the delta seaside and river bed processes with the use of space images were also carried out. According to Ukraine, this long-term work carried out in the Ukrainian part of the channel confirmed that its impact is limited and localised, and that the channel would not lead to considerable changes in the main parameters of the environment and biodiversity in the Danube Delta. Also, Ukraine excludes any transboundary impact of dredging and soil dumping at the sea dumping site on the Romanian territory. Finally, Ukraine informed that the monitoring was carried out by Ukrainian nationals.

Besides, Romania presented the results of monitoring of birds in the south of the Danube Delta Biosphere Reserve, noting a substantial reduction of certain bird colonies due to disturbance of the reclaimed lands at the exit from the Danube Delta. Also, Romania drew the attention to a possible impact of dredging works upon the state of fry and adults of the migrating sturgeon species which, in its views, had not been properly assessed.

In conclusions, Ukraine presented a report on the implementation of Recommendation No. 111 (2004) and asked the joint Commission to forward it to the Standing Committee for the closure of the complaint. The parties agreed that the document presented by Ukraine represented only Ukraine's views on the matter.

In its report, Ukraine confirmed that works related to Phase II of the project are not yet implemented. An EIA procedure is going on, in compliance with Espoo requirements. Ukrainian authorities informed that the authorities of Romania decided to consider Phase II as a new project and abandon the claims on the first phase which has already been completed. On the issue of the public consultations for phase II,

Ukraine regretted the lack of cooperation from Romania to organise public hearings in this country. It further informed about meetings carried out with international bodies under the item related to the need of involving international experts in the monitoring programmes. However, this information needs to be clarified as it seems in contradiction with what stated at the meeting of the joint Commission. The rest of the report provides information already submitted in the past, related to activities implemented in the period 2004-2014. Moreover, the authorities addressed the detailed summary of the conclusions of the report on the “Comprehensive Environmental Monitoring during the Construction and Operation of the Danube – Black Sea Deep Navigation Route in 2014”, which includes some general recommendations to reduce environmental damage resulting from the navigation works.

At its meeting in September 2015, the Bureau welcomed the coordination work carried out by the Joint Commission and noted with satisfaction the numerous issues where the three concerned Parties reached agreement, including for the conservation of Bern Convention’s species.

At its 35<sup>th</sup> meeting, the Standing Committee to the Convention - with the Agreement of the Parties - decided to keep the case-file open and to entrust the Joint Commission with the task of acting as a supervisory and co-ordination body that will address the remaining issues, including the re-assessment of the EIA in a transboundary context, where appropriate. The Committee invited the Joint Commission to keep the Bureau informed on progress and to report at the 36<sup>th</sup> Standing Committee meeting.

In February 2016, the Government of Romania also forwarded Protocol of the meeting of the Trilateral Joint Commission which took place in Izmail in May 2015. In September 2016, the Government of Ukraine forwarded the Protocol of the 4<sup>th</sup> meeting of the Joint Commission which took place in Odessa on 23-24 March 2016.

From the Protocol of the 4<sup>th</sup> meeting of the Joint Commission appears that when discussing the open case-file before the Bern Convention, the Joint Commission agreed that the topic should be debated again when the results of the meeting of the Working Group for implementation of Joint Monitoring Programme are available. The meeting of the WG was expected to take in October 2016.

In September 2016, the Bureau decided to invite the Parties concerned to present the eventual results of the WG on the Joint Monitoring Programme before the 36<sup>th</sup> Standing Committee. The Bureau, noting that cooperation between the Parties in the frame of the Joint Commission is constant, fruitful and promising for solving the remaining issues of the case-file, advises the Standing Committee to make a decision on whether to keep the case-file open or to proceed to its closing.

In an updated report, the Republic of Moldova informed that the country began the national process of creating Biosphere Reserve Lower Prut, including the drafting of two national laws. The future Biosphere Reserve "Lower Prut" should have an area of 14,771.04 hectares and currently the two draft laws are subject to compulsory legal checks. The authorities also informed that the organisation of the 5<sup>th</sup> meeting of the Commission was delayed and will possibly take place in February or March 2017, if agreed by all Parties.

#### ➤ **2004/2: Bulgaria: Wind farms in Balchik and Kaliakra – Via Pontica**

This case concerns the building of windfarms in Bulgaria, at Balchik and Kaliakra, on the Black Sea coast. The NGO challenged the chosen sites located on the Via Pontica which is one of the main migratory routes in Europe especially for soaring birds.

An on-the-spot visit was carried out in September 2005, on the basis of which the Committee adopted Recommendation No. 117 (2005), asking the Bulgarian government to reconsider its decision to approve the proposed wind farm in Balchik in view of its potential negative impact on wildlife and taking account of Bulgaria’s obligations under the Convention.



In 2006, the Bulgarian government informed the Secretariat that it did not intend to review the decision approving the wind farm project. The Secretariat received information from NGOs on a similar case involving plans to build 129 windmills 20 kms away from Balchik, between the town of Kavarna and the Kaliakra Cape.

A new on-the-spot appraisal was carried out on 20-22 June 2007. On the basis of the expert's conclusions the 27<sup>th</sup> meeting of the Standing Committee adopted Recommendation No. 130 (2007) "on the windfarms planned near Balchik and Kaliakra, and other wind farm developments on the Via Pontica route (Bulgaria)".

In June 2008, the European Commission opened an infringement procedure against Bulgaria because of insufficient designation of 6 sites as SPAs under the Bird Directive, one of which is the Kaliakra IBA.

In 2009, the delegate of Bulgaria informed the Committee that a "Strategic Environmental Assessment (SEA)" of Bulgaria's Energy Strategy and National Plan for Renewable Energy Sources had been initiated in spring, with meetings at expert level. Bulgaria's Ministry of Environment and Water expressed its readiness and intention to co-operate with civil society and business representatives to achieve the necessary results and fulfil the country's obligations for the protection of its nature and biodiversity.

At the Standing Committee meeting in 2010 the delegate of Bulgaria presented the government report informing, among others, of measures taken concerning the preventive protection of NATURA 2000 sites. Furthermore, she confirmed that no new authorisations for development in SPA Kaliakra and IBA Kaliakra have been issued in 2010.

Following information provided by the delegate of the European Union as well as by the representatives of BirdLife and the AEWA, the Committee decided to keep the case file open and continue to follow it up in close co-operation with the European Commission.

At the 2011 Standing Committee meeting the Secretariat presented the report forwarded by the Bulgarian government, focussing on the new energy strategy up to 2020, as well as on progress on the drafting of a national action plan for renewable energies, which was still pending after that the public consultation highlighted serious omissions.

In addition, the Ministry issued formal instructions for the General Inspectorate of the Environment and Water, asking to reduce the number of authorisations issued pending the launching of the national plan; there was also a slowing down of projects already authorised owing to financial and technical problems (1 project involving 32 turbines had been stopped).

The representative of BirdLife/Bulgaria expressed her great concern about the lack of progress made and underlined the gap between the government's promises and the situation on the ground; she also protested at the energy sector's very powerful lobby.

The Committee decided to keep the case file open, asking the authorities of Bulgaria to present a report for its next meeting, as well as to take into consideration the provisions of Recommendation No. 130 (2007).

In 2012, the Secretariat didn't receive a reply to the reporting request addressed to the authorities in view of the first Bureau meeting.

Moreover, the Secretariat received an invitation from the AEWA Secretariat to join a possible Implementation Review Process (IRP) mission to the country, to assess the possible impact of a new windfarm project near Durankulak lake which "has the potential to endanger the coherence of the area as a wintering ground for the red-breasted goose as the windfarm is foreseen to be built in the main feeding area of the geese". This project was approved by the Regional Inspectorate of Environment and Water in Varna in spite of the objections raised and argumentations provided by nature conservation NGOs, the

local hunting organisation and local residents. This was not an isolated development as a number of windfarms had already been established in the vicinity of Lakes Durankulak and Shabla in areas previously providing feeding habitat to wintering geese, now avoided by the birds.

The complainant also submitted updated reports in March and September 2012, providing the NGO's analysis of the implementation of Recommendation No. 130 (2007) by the Government of Bulgaria and concluding that the authorities were still failing to fully implement it.

The NGO further recalled the procedures opened under the European Commission and noted the need for urgent international intervention to stop a situation which already caused irreparable damage and which would be in contravention of Articles 2, 3, 4 and 6 of the Convention.

In conclusion, the NGOs requested that the Bureau (i.) urges the authorities of Bulgaria to transmit a progress report on the implementation of the Recommendation, as well as a clear action plan of activities and measures envisaged for implementing the recommendation; (ii.) that Bulgarian authorities stop issuing authorisations and licences regarding wind farm developments in the area; (iii.) that the European Commission speeds-up the infringement procedures.

In a report submitted in August 2012 the European Commission informed that a reasoned opinion was sent to Bulgaria on the infringement procedure concerning wind farms and other developments in "Kaliakra complex" SCI, "Kaliakra" SPA, "Belite Skali" SPA. Through the reasoned opinion the Commission asked Bulgaria to comply with applicable EU laws in a period of two months, after which the Commission could decide to refer the case to the EU Court of Justice.

The Bureau decided to keep the case-file open and instructed the Secretariat to inform the AEWA about the readiness of the Bern Convention to join a field visit should this be organised.

At the 32<sup>nd</sup> Standing Committee meeting, the delegate of Bulgaria presented the government report highlighting that, of the 2,526 wind energy projects received since 2007, only 117 had been constructed further to obtaining the necessary authorisations. None of these was located in a Natura 2000 area. He further reported on the measures undertaken to implement the relevant Standing Committee Recommendations stressing that, since 2007, no new development had been authorised without fulfilling the EIA/AA procedure. Moreover, the legal framework had been reviewed through the adoption of new Environmental Protection Law and Biological Diversity Law which introduce a 5-year limit of validity for EIA and AA decisions.

He concluded by highlighting that, at the request of the Ministry of Environment and Water, the National Plan of the Renewable Energy Sources was also reviewed and a ban introduced to overcome, reduce and, if possible, completely eliminate all potential adverse effects that the construction of windfarms may have on the Natura 2000 sites.

The representative of BirdLife Bulgaria summarised the content of the reports submitted by her NGO in 2012, stressing that the EIAs realised for Balchik and Kaliakra areas do not examine alternative solutions or locations or the possible negative and cumulative impacts.

The representative of the AEWA reiterated that the windfarm developments along the Via Pontica continued to be a real concern and regretted to note that the AEWA Standing Committee didn't receive a reply to the offer to send an advisory mission on the ground. He concluded his intervention by making a number of proposals which received the support of the Parties.

The Committee acknowledged the steps undertaken by the Government of Bulgaria with regards to development and adoption of a National Action Plan on Renewable Energy Sources 2011-2020 and other reported measures but noted, at the same time, that concrete progress were delayed and windfarming was still insufficiently regulated. It therefore decided to keep the case-file open and asked the government of Bulgaria to submit, before the 33<sup>rd</sup> Standing Committee meeting, a structured, detailed and comprehensive report on the implementation of all provisions of Recommendation No. 130 (2007).

In January 2013 the Secretariat addressed a reporting request to Bulgarian authorities in view of the first Bureau meeting. Following the request of the Party, the Secretariat agreed to extend the deadline stressing that an oral summary of the content of the report would be given to the Bureau members.

In the meantime, the Secretariat was informed by the AEWA that, in December 2012, the Ministry of Environment and Water replied to the AEWA that it didn't consider appropriate to accept an IRP mission due to a pending court case regarding the appeal of the investor against the decision of the Minister to annul the EIA decision of the Director of the RIEW-Varna. However, on 17<sup>th</sup> January 2013, the Supreme Administrative Court (SAC) of Bulgaria annulled the decision of the Minister of Environment and Water thus allowing for the project to be implemented and the windfarm constructed. As a consequence, the AEWA reiterated its offer of advice on this complicated issues which was again rejected until the court case was pending. The Minister took nonetheless the responsibility to keep the AEWA informed of any development on the court case and the environmental procedures.

At its meeting in April 2013 the Bureau decided to keep the case-file open and instructed the Group of Experts on the conservation of birds to put the assessment of this complaint on its agenda, in order to prepare an opinion for next Bureau meeting.

Both the Party and the complainant sent updated reports to the attention of the Group of Experts which discussed the issue in their absence, as an exchange of views. The seriousness of the situation was generally recognised and the Group expressed concern about the high number of developments in the same flyway and, more particularly, about those that impact upon globally threatened species. The Group also recognised the wider geographical dimension taken by the file, stressing on the cumulative effect of wind farms.

At its meeting in September, the Bureau deeply discussed the complaint, clearly noting the tangible efforts of the authorities, and regretting the difficulty in conciliating bird conservation needs with the development of the green energy sector. The Bureau further discussed the coordination with the AEWA and other partners, including the EU, as a way for providing assistance to Bulgarian authorities on this matter. The Bureau members made several proposals, ending in a draft opinion for the attention of the Standing Committee.

At the 33<sup>rd</sup> Standing Committee meeting the Parties discussed the present case-file in the absence of Bulgarian authorities. However, the actions undertaken by the authorities to address the matter were presented by the Secretariat on the basis of a written report submitted by the delegate of Bulgaria. The representative of the NGO had the opportunity to acknowledge some of the progress made by the authorities for implementing Recommendation No. 130 (2007), while stressing that some important issues were still to be addressed. For instance, the situation of the Smin windfarm was still unclear because of the pending Court ruling.

Besides, the representative of the UNEP/AEWA reported that the Ministry of Environment of Bulgaria had informed that a new EIA procedure would start for the Smin windfarm and that the authorities might appreciate advice from the UNEP/AEWA, including through an IRP mission to the country.

The Committee decided to keep the case file open and gave mandate to the Bureau for its future collaboration with the UNEP/AEWA Secretariat. Bulgarian authorities didn't reply to the reporting requests sent by the Secretariat for the two Bureau meetings in 2014.

Nonetheless, the UNEP/AEWA informed about a meeting held in February 2014 with representatives of the Bulgarian Ministry of Environment and Water, during which the authorities undertook a series of commitments regarding mainly the windfarm project in Durankulak Lake. Updated information was submitted also by the European Commission, whom informed having referred Bulgaria to the European Court of Justice over its presumed failure to protect unique habitats and important species in the Kaliakra region due to windfarm developments.

Finally, in August 2014, the Secretariat received an updated report from the complainant, informing about the lack of any progress in the implementation of most of the actions recommended by the Standing Committee through Recommendation 130 (2007). Moreover, concerning the windfarm project in Duraknolak Lake, suspended by the Ministry, the NGO informed about the last decision of the National Court, delivered in July 2014, ruling against the Ministry of Environment and Water. As a result, the windfarm project was again a reality which could dramatically impact the Red-breasted Goose. In addition, none of the turbines considered dangerous by the Standing Committee had been removed. The report further proceeded to analyse compliance with each of the operational paragraphs of the Recommendation adopted by the Standing Committee and requested the international community to urgently assist Bulgaria in addressing the issue of the windfarm developments as a matter which may cause irreversible damage to Europe's natural heritage.

The Bureau referred the case as an open file to the Standing Committee. The Committee examined the arguments put forward by the authorities of Bulgaria, the complainant, and the representative of the AEWA, and asked the national authorities to be much more reactive to the reporting requests so to help the Institutions of the Convention putting forward the necessary recommendations in a more efficient way.

As a follow-up to this complaint, the Committee decided to keep the case-file open and asked Bulgarian authorities to provide the Bureau with a comprehensive report, including a detailed description of the actions taken in order to comply with the Recommendation of the Standing Committee, also in light of the most recent administrative and legal provisions in force at both national and international level.

Moreover, the Committee encouraged Bulgaria to prepare and communicate to the Standing Committee an Action Plan detailing the measures envisaged for ensuring the expedite and effective implementation of Recommendation No. 130 (2007), including a timetable to be delivered for the Bureau meeting in April 2015.

Finally, the Committee strongly invited Bulgaria to reconsider its position regarding the IRP mission proposed under the AEWA as it can contribute to a better assessment of the current challenges and needs.

In January 2014 the Secretariat addressed to Bulgarian authorities a specific reporting request, based on the decision of the Standing Committee but the report didn't reach the Secretariat on time to be assessed by the first Bureau meeting. As a consequence, the decision on this item had to be postponed. Nevertheless, the Bureau instructed the Secretariat to forward the report of the authorities to both the complainant and the AEWA Secretariat for their views. Unfortunately, the AEWA informed that there were no progress made regarding the Smin windfarm and a possible IRP visit, also due to the workload of the Secretariat which prevented further contacts.

In their reports, the authorities inform on the actions undertaken to implement Recommendation No. 130 (2007), emphasising on the benefits of the Convention's monitoring procedure which contributed to improve the country's capacity in EIA process and reports and in establishing a constructive dialogue with NGOs. Moreover, appropriate assessment, including of cumulative impacts, is now systematic for projects affecting the environment, and the structures in charge of the management of protected areas have been reinforced.

More concretely on Kaliakra's windfarms, the authorities recalled that in 2012 they started reconsidering the authorisations issued for projects not already implemented, thus eliminating 90 % of the approved projects. Furthermore, all windfarm projects in Natura 2000 sites are now subject to EIA which have to be conducted following strict requirements and conditions. Moreover, although the general impact of wind turbines on birds had not been assessed by the authorities, some monitoring is going on at the initiative of wind parks operators. However, the results of these studies are controversial and need more time for a proper evaluation.

The report also mentions the improvements due to the adoption of the Energy Strategy 2020, which produced bans on new wind farms, regulated the authorisation's process, made EIA requirements stricter, and devised measures for eliminating or reducing the negative impact of these energy infrastructures.

Moreover, a Manual has been prepared for enabling the effective implementation of environmental legislation for wind farms. The Manual has been prepared in cooperation with NGOs and takes account of both EU and Bern Convention guidelines on windfarms and protected areas. Also, the authorities mention some projects carried out with EU funds for reducing the mortality risk of specific species.

Besides, the report of the authorities recalls that Kaliakra SPA has been expanded in 2014, and informs that the procedure for the declaration of a new SPA in Dobrudzha region has now been completed. Moreover, new areas of steppe habitats have been included in Dobrudzha SCI in view of increasing its diversity. Also, the authorities have finalised a draft management plan for the whole territory in Kaliakra region, covering several Natura 2000 sites. The management plan includes an analysis of activities impacting some targeted species and habitats, and measures to manage the risk of collision of migratory birds and monitoring their mortality.

On 3<sup>rd</sup> September the NGO addressed its own report, containing an overall analysis of the implementation by Bulgaria of relevant Standing Committee's recommendations. The conclusions are mitigated, with efforts and steps undertaken in the most recent years but lack of tangible results compared to the goals and aims of the recommended actions. In the views of the NGO this is due to the long delays in which (only) some of the recommended actions have been partially implemented. Generally, the NGO welcomes the changes in the legislation, the strategic plans, and the adoption of new regulations. At the same time, it notes a persistent low quality of EIAs and, most important, inaction regarding dismantling or relocating the problematic windfarms. This is for instance the case of the tree windfarms in Kaliakra, which are still operational despite evident impact on the biodiversity of the protected site. Moreover, the NGO questions the quality of the national reports which do not allow for a proper analysis of progress. The complainant presented an analysis of the efficiency of the measures undertaken to meet the requests of the Standing Committee and invites the Standing Committee to adopt an official opinion on the quality of the results so far achieved, together with further guidance for future efforts.

In addition, on 3<sup>rd</sup> September the Advocate General released his opinion on the case pending against Bulgaria before the European Court of Justice.

As a reminder, the European Commission claims:

1. The insufficient designation of Kaliakra SPA, which makes the site inadequate to ensure the conservation of the species listed in Annex I of the Birds Directive and the migratory species not listed in the Directive but regularly coming to the area (violation of article 4 §1 and 2 of the Birds Directive);
2. Violation of Article 4§4 of the Directive, for approving 6 important wind farm projects outside Kaliakra SPA but in an area which should have been designated as SPA;
3. Violation of article 6§2 of the Habitats Directive, for authorising wind and sport projects within Kompleks Kaliakra SCI and Belite Skali SPA;
4. Violation of Article 2§1 in conjunction with Article 4§2 and 3 of the EIA Directive, for failing to properly assess the cumulative impacts of the projects authorised outside the SPA but in an area which should have been designated as such.

The Advocate General recognised the insufficient designation of Kaliakra SPA and the failure to adequately protect the relevant species and habitats. He further recognised a violation of the Birds Directive for failure to take adequate measures to prevent that the projects authorised outside the designated area degrade the habitats and species that should have been protected. The same conclusions apply to the violation of the Habitats Directive for failure to avoid that the projects authorised within the SCI and SPA damage the habitats and species for which the sites had been designated. Finally, the Advocate General partially agreed on the claim about the violation of the EIA Directive and considered that Bulgaria failed to properly evaluate the cumulative impacts of some of the private and public projects in a sensitive area.

The Bureau, at its meeting in September 2015, regretted the little progress achieved since the file was open 11 years ago. The Group of Experts on the Conservation of Birds, meeting in October 2015, also debated the case and expressed its worries regarding the situation of migratory birds in the Northern-East coast of Bulgaria.

At its 35<sup>th</sup> meeting in 2015, the Standing Committee decided to keep the case-file open and emphasised that Bulgarian authorities need to strengthen surveillance after any infrastructure developments to ensure the implementation of the appropriate mitigation measures. The Committee invited the authorities of Bulgaria to step-up efforts towards the full implementation of Recommendation No. 130 (2007), and to carry out a comprehensive, independent, and quality assessment of the impact of windfarms' developments in the concerned area.

On 14<sup>th</sup> January 2016, in case number C-141/14 brought by the European Commission, the Court of Justice of the European Union ruled against Bulgaria over its failure to protect unique habitats and important species in the Kaliakra special protection area at the Black Sea coast.

In their report from February 2016, the national authorities briefly informed that the first violation found by the European Court of Justice was duly removed as the necessary areas were added to the "Kaliakra" special protected zone", and informed that in respect to the remaining three violations, the country would reply to the European Commission within a period of 2 months from reception of the letter notifying the Court's decision.

In July 2016, the European Union informed that the European Commission is currently in dialogue with the Bulgarian national authorities on the implementation of the court judgement.

In an updated report sent in August 2016, Bulgarian authorities informed that an Integrated Management Plan (IMP) for three Natura 2000 zones (Complex Kaliakra, Kaliakra and White Cliffs) was commissioned to the Institute of Biodiversity and Ecosystem Research (IBER and the Bulgaria Academy of science. This IMP was developed as a result of the ECJ rule from 14 January against Bulgaria. This IMP will include 1) the development of combined early warning system, including radars and observers, 2) the implementation of measures to sustain the key habitats for bird species, including active management of affected habitats, and 3) the implementation of conservation and management measures from the Action Plan for the Red-breasted Goose.

They further reported that no targeted research on the impact on wind energy in the Northeastern Black Sea coast on bat species was performed and that this should also be one of the aims of the IMP presented above.

The national authorities report concludes that the competent Ministry is also planning training and information campaigns targeting regulatory authorities, wind farm operators, users, etc. They mentioned however that several wind turbine stoppages were made by the operators themselves during 2015 and 2016.

In their spontaneous report send for the second Bureau meeting in September 2016, the NGOs explained that, as foreseen by the ECJ rule, the negative impacts on the site can only be removed if the wind turbines are removed from the relevant sites and this will be also a way to comply with Recommendation No. 130 (2007).

In their updated report sent for the 36<sup>th</sup> meeting of the Standing Committee, the national authorities inform they are still in negotiation with the European Commission on the ways to implement the Court's judgement.

According to the complainant's latest report, there is a presumed action by the investor of some of the wind power parks targeted by the ECJ's judgement, namely of "Kaliakra Wind Power" Corp, seeks an extension of his license long before the deadline (11 years) as insurance against future acts of government to implement the judgment in Case C-141/14.

In addition, the complainant considers that there is an issue regarding the state aid measures which benefitted some wind farms subject to judgment in Case C-141/14, in particular after the issuing of the ECJ's decision. The complainant has requested the Bulgarian government to inform which measures (legal or other) have been put in place in order to prevent these wind farms and their investors to benefit from such state aid.

➤ **2007/1: Italy: Eradication and trade of the American grey squirrel (*Sciurus carolinensis*)**

In 1999, the Standing Committee adopted its Recommendation No. 78 (1999) on the conservation of the red squirrel (*Sciurus vulgaris*) in Italy. A second set of Recommendation [No. 114 (2005)], on the control of the grey squirrel (*Sciurus carolinensis*) and other alien squirrels in Europe, was adopted in 2005 asking Italy to start without delay an eradication programme.

In 2007, the Standing Committee asked the Bureau to examine the possibility of opening a file for a possible breach of the Convention by Italy on this case. An on-the-spot appraisal was carried out in May 2008. The main conclusions of the expert's visit were that the presence of the American grey squirrel in Italy was a serious threat for the survival of the protected native red squirrel, and that this expansive trend had the full potential to turn the invasion into a continental problem, where France and Switzerland would become the next countries to be affected.

In 2008, the Standing Committee agreed to open a case file and decided that a new Recommendation was not necessary. Instead it asked the Secretariat to communicate a list of actions to the Italian government.

In September 2009, the Italian government reported on progress to finalise the signature of a Memorandum of Understanding between the regions concerned, and the preparation of a LIFE+ project on: "Eradication and control of grey squirrel: actions for preservation of biodiversity in forest ecosystems", with the involvement of the three regions (Lombardia, Piemonte and Liguria) and the Ministry of Environment. Regarding the decree to ban the trade and keeping of the American grey squirrel, which should cover the whole national territory, the final text was agreed in late July 2009, and should have been shortly examined by the legal offices of the three Ministries involved (Agriculture & Forestry; International Trade; and Public Health).

At the 29<sup>th</sup> meeting of the Standing Committee, the delegate of Italy announced that the Ministry of Environment was fully committed to implementing Recommendation No. 123 and therefore had concluded a MoU in August 2009 with the three regions involved and two research institutions. A number of activities had been planned, including control of the species, monitoring of grey and red squirrels and awareness campaigns. The Ministry was preparing a decree to prohibit the trading and keeping of the grey squirrel.

The Committee took note of the information presented and welcomed progress in the conclusion of a MoU among all the actors involved in the control of the species, as well as of plans to pass a legislation banning trade on the species. However, it considered that since there had not been yet neither any action on the ground nor legislation approved, the case file should be kept open, asking Italy to fully implement Recommendation No. 123 (2007).

At the 2010 Standing Committee meeting, the delegate of Italy informed on the state of progress of the Memorandum of cooperation to be signed by the competent Provinces before entering into force; on the negotiation around the draft decree for banning the trading and keeping of the grey squirrel; and on the Life+ Project, finally launched in September 2010.

Noting that the decree concerning the banning of the trade and keeping of the American grey squirrel was not approved yet, the Committee decided to keep the file open.

In 2011 the situation remained almost unchanged. The Italian delegate presented the Government report, informing on the implementation of the LIFE+ Project, particularly focussing on the elaboration of a communication action plan to target the wider and general public, highlighting the multiple challenges of obtaining a wide consensus of the civil society. No real progress could be reported on the decree on the banning of the trade and keeping of the species.

The Committee expressed deep concern for the longstanding situation which was seen as a serious threat for the long-term survival of the native red squirrel, while damaging the woodland. The Committee was particularly worried to note that inaction could result in the spread of the invasive alien species to other Contracting Parties.

The Committee agreed to keep the case-file open and instructed the Bureau to closely follow up this issue.

Italian authorities sent updated reports in February and August 2012, informing both on the state of implementation of the LIFE+ Project “EC-SQUARE”, and on some difficulties regarding eradication in Piedmont Region, where the procedure aimed at delivering the necessary authorisations for the capture of the American grey squirrel were temporarily suspended due to an appeal presented by animal welfare NGOs to the Regional Administrative Court of law.

Moreover, in their last report Italian authorities informed that the Ministry of Environment had finally obtained positive advices on the draft decree on banning the trade of the species from the Directorates of the State Forestry Corps of the Ministry of Agricultural, Food and Forestry Policies and the Ministry of Economic Development. The visa of other related Ministries was still pending but the authorities were confident that a positive reply will be given to their request.

At the 33<sup>rd</sup> Standing Committee meeting, the delegate of Italy reported on a series of good progress, particularly concerning Liguria and Lombardy regions and informed that the ban decree was signed by the Minister of the Environment and forwarded to the other Ministers involved in animal trade and management for their definitive countersignature.

Some of the Parties thanked Italian authorities for their efforts in a difficult media and social context, noting however that the species was still not completely under control and that the adoption of a decree on banning the trade of the species was pending since at least four years.

The Committee therefore decided to keep the file open.

In 2013, Italian authorities informed on the implications of the adoption and entry into force of the ban decree “Dispositions for the control of detention and trade of alien squirrels of the species *Callosciurus erythraeus*, *Sciurus carolinensis* and *Sciurus niger*”. The government report explained that, further to the adoption of the decree, the trade, breeding and detention of these species had been forbidden in all the national territory, with a few exemptions only for zoos, circuses, research institutes, wildlife conservation bodies and scientific institutions.

The decree also addresses the situation of those already detaining specimens of the mentioned species, fixing the rules and procedural steps for their declaration to CITES unit of National Forest Corp as well as sanctions for those who abandon the species into the wild.

At the last Standing Committee meeting the delegate of Italy presented the government’s report, and the project manager of the LIFE project on the eradication of the species presented the latest information related to the eradication efforts.

Despite some encouraging information concerning the return of the red squirrel in the areas where the eradication succeeded, animal welfare’s organisations were still posing big challenges to the full implementation of the project and the eradication campaign was confronting appeals to the Administrative Courts, political pressure, petitions and public demonstrations. Moreover, the project revealed that there are areas in Italy, notably those where the American grey squirrel expanded, where the red squirrel disappeared.



The Committee expressed satisfaction for the efforts of Italian authorities and very much welcomed the adoption of the decree for banning the trade, breeding and detention of the American grey squirrel. However, considering that the LIFE project EC-SQUARE was still on-going, the Committee decided to keep the case file open.

The case was not assessed at the first Bureau meeting in 2014 so to give the country the possibility to continue the implementation of the LIFE project and evaluate its results before the first reporting.

In the report submitted in August 2014 the Italian authorities informed about the enforcement of the decree banning the trade, breeding and detention of the American squirrel: the shops stopped selling it and the CITES Territorial Services of the cities concerned by the “invasion” didn’t register any infraction.

Concerning the LIFE project, the authorities regretted the continuous delays experienced in the implementation, due once more to the criticism of the majority population, particularly in Lombardy region. This also materialised in the lack of permission to accede to some private areas, despite the presence of the invasive species. As a consequence, the expected results of the project were already revised in 2013, with the identification of less ambitious goals. However, the efforts and commitment toward the eradication remained unchanged.

The report underlined that a particularly dangerous population had been identified just a few kilometres from the Swiss border, where the alien squirrels already colonised a large area. In order to address this problem, the competent authorities prepared a specific Action Plan, which has been (and still is) unfortunately blocked for some months at the administrative level. The Action Plan is not adopted yet and the authorities noted a high risk of not being able to stop the expansion of the population.

Regarding Piedmont region, the authorities were controlling the grey squirrel in restricted areas (of a total area of about 2,000 km<sup>2</sup>) and were considering several steps forward.

In Liguria, where the project privileged the surgical sterilisation of the animals instead of their suppression, the strong local opposition was making difficult for the authorities even to find veterinary structure willing to proceed to the sterilizations. 130 squirrels were sterilised in Genova Nervi area but the species was considered to be progressing again.

The same information was presented at the Standing Committee during its 34<sup>th</sup> meeting. Regarding the control and eradication on the ground, Italy informed about stronger efforts devoted to raising the awareness of the local communities on the threats posed by IAS. A specific communication action plan had been prepared by a professional company and more resources were allocated to its implementation.

Moreover, a wide-scale information campaign had been launched within the LIFE EC SQUARE project and a dedicated task force had been set up for communication purposes. The report of the authorities concluded with a description of the main results already produced on this aspect.

The Committee decided to keep the file open in light of the progress regarding the on-going LIFE project.

The report sent by the authorities in August 2015 presented an updated evaluation of results. The Decree on the banning of the species is regularly implemented: shops completely stopped selling grey squirrels and CITES territorial services didn’t found any cases of violation of the decree. Moreover, in terms of concrete results, the authorities achieved the almost complete eradication of the grey squirrels in Genova Nervi and the surrounding areas, with only few animals being still trapped. According to the estimates, 3,000 hectares of forest areas were adequate for recolonization by the red-squirrels.

The report vaguely informed about the start of activities aimed at the eradication of alien squirrels in 4 macro areas (out of eight) in Lombardy region, and in one a few kilometres from Switzerland. These activities should avoid the colonization of North Italy and Switzerland by alien squirrels and will be sustained after the end of the LIFE project. The same approach applies to Piedmont region, which hosts

the largest grey squirrel population in Italy. The authorities were confident that the knowledge acquired through the LIFE project on both innovative eradication techniques, sociological aspects, and legal procedure will be sustained and used for the post-LIFE eradication phase.

The Standing Committee, at its 35<sup>th</sup> meeting, welcomed the progress achieved by Italy through the adoption of the Decree on banning the trade and detention of the species, as well as through the implementation of the EU funded LIFE project.

The Committee took further note of the commitment of Italy to sustain both the eradication and awareness measures initiated under the LIFE project after the latter will come to an end, however, noting that eradication is not yet fully achieved, the Committee decided to keep this case-file open and invited Italy to report on progress at its next meeting.

In their updated report provided for the 36<sup>th</sup> meeting of the Standing Committee, the national authorities inform that:

- In the Lombardi region, management of the species will continue within the framework of a new LIFE GESTIRE 2020, started in 2016. The authorities further inform on the number of captured individuals and priority areas for action.
- In the Piedmont region, a new LIFE + EC-SQUARE project aiming a permanent control of the gray squirrel will run in the period 2016-2020 and its implementation is currently being planned.

The authorities consider that with the inclusion of the non-native squirrel species in the Union list of IAS of concern, in addition to the national legislation adoption (Ministerial decree for the banning of the trade of the species), the case-file has finished its driving force and should be closed.

➤ **2010/5: Greece: threats to marine turtles in Thines Kiparissias**

On 22<sup>nd</sup> August 2010 the Secretariat received a complaint from MEDASSET (The Mediterranean Association to Save the Sea Turtles) regarding development plans in a NATURA 2000 site (THINES KYPARISSIAS - GR2550005) which would affect *Caretta caretta*, a threatened species protected under the Bern Convention. The NGO reported about uncontrolled development on the site (summer houses building, construction of coastal roads, occupation of the beach by, among others, bars, umbrellas and deck chairs) and expressed concerns over the intensive pressure on the nesting activity of turtles, which can lead to reducing the unique population of *Caretta caretta*.

The complainant referred to the obligations for the Contracting Parties mentioned in articles 4 and 6 of the Bern Convention, and highlighted that *Caretta caretta* is also protected by other international agreements, among which CMS, CITES and the Barcelona Convention for the protection of the Mediterranean Sea against pollution, and the EU Habitats Directive.

In March 2011 the Greek authorities forwarded to the Secretariat the response sent on 22nd December 2010 to a letter of the European Commission in relation to the protection of priority species in the Natura GR 2550005 site.

The response informed that a law concerning Conservation & Biodiversity had been approved by the Greek Parliament to ensure a more effective protection regime for the priority species in all Natura 2000 sites. The law should have entered into force by the end of March 2011. In addition to that, the Ministry of Environment was in the process of drafting a Joint Ministerial Decision, based on a specific environmental study of 2002, which should regulate all activities within the GR 2550005 Natura 2000 site by providing a specific legal protection regime. The Joint Ministerial Decision should allow facing conservation problems in an integrated way for the whole Thines Kyparissias Natura 2000 site.

Among the measures taken, national authorities forwarded to Local Authorities the specific environmental study mentioned above, along with a Presidential Draft Decree which included a Management Plan for the Area, with the request of taking these into account to enforce the necessary Environmental Protection measures. The response additionally informed that a recently adopted

Ministerial Decision required the official approval of the Ministry of the Environment for any license of exploitation of the sandy seashore sites issued by the Local Authorities. However, the responsibility concerning the compliance with obligations related to the exploitation itself lies down to the Local Authorities and the State Property Service.

In a report sent in September 2011 the NGO informed that, although the law on Conservation and Biodiversity entered into force in March 2011, enforcement of specific protective measures was still poor, and a number of illegal activities continued to exert a considerable amount of pressure on the nesting activity of marine turtles. In addition, according to the NGO, the Joint Ministerial Decision announced by Greek authorities was drafted yet; furthermore, none of the demolition protocols issued by the State Property Service of the Prefecture of Messinia for the illegal constructions in the area was executed.

The NGO report denounced the degradation and erosion of the sand dunes and coastal forests, due to roads and buildings illegally developed; the lack of restoration measures to compensate the destruction part of the sand dunes; the absence of specific protection measures and lack of provision of appropriate information to local residents. The NGO considered that it would be appropriate to draft an updated Special Environmental Study (the current one was prepared in 2002), which would take into account the new developments and assist competent Local Authorities to identify specific conservation measures for the area in question.

The Bureau took note of the information provided by the NGO, which questioned the effectiveness of the measures undertaken by Greek authorities, as described in the report submitted the government in March 2011. However, because of the lack of reply by Greek authorities, as well as of new information from the European Commission, the Bureau was not in a position to properly assess the situation. It decided to consider this complaint as a complaint in stand-by at its first meeting in 2012.

In a report sent end of March 2012, Greek authorities forwarded again the “Response to the letter of the European Commission in relation to the protection of priority species in the Natura GR 2550005 site” (sent on 22<sup>nd</sup> December 2010) and further informed that the procedure for the special protection of the above area and the issuance of a Joint Ministerial Decision (J.M.D.) applicable for a period of 2 years would be jointly prepared by the competent Legislative authority of the Ministry. The updating of the Special Environmental Impact Assessment (S.E.I.A.) prepared specifically for this referenced area had been included in the overall planning for the time period 2012-2015.

Finally, the authorities confirmed that the Administration of Messinia Prefecture had been instructed on the need to protect the site in order to ensure that the requirements set under the EC Directive 92/43 were met.

The report sent by the complainant informed that enforcement of the specific protective measures for Thines Kyparissias, included in the law concerning the Conservation and Biodiversity (entered into force at the end of March 2011) was lacking. At the same time, the provision of information to local residents by the Prefecture of Messinia regarding appropriate use of the nesting beach was also missing, while a number of activities and illegal constructions on the site continued to exert a considerable amount of pressure on the nesting activity of marine turtles. The NGO also stressed that the situation remained unchanged since last reporting, as the JMD had not yet been drafted by the National authorities and in the meantime local authorities had not prepared any specific protection measure for the area.

Finally, the NGO recalled that none of the demolition protocols issued by the State Property Service of the Prefecture of Messinia for the constructions illegally built in the area had been executed; extensions of already existing beach bars were recorded by the Land Property Service in 2011 for which new demolition protocols were issued but not executed. The same concern remained for the three beach bars that operated illegally in 2011 within the core zone of the protected area (Kalo Nero) which the NGO feared that they could restart their illegal activity soon.

The Bureau decided to consider the complaint as a possible file and to forward it to the Standing Committee to decide whether or not to open a case-file. The Bureau further instructed the Secretariat to organise an on-the-spot appraisal for putting mediation in place and gathering additional information for the attention of the Standing Committee.

In June 2012 the Secretariat addressed an official letter to Greek authorities informing about the decision of the Bureau and requesting their agreement for an on-the-spot visit which would serve to gather additional information for the Standing Committee's attention. In September 2012 Greek authorities informed the Secretariat that its request of agreement for an on-the-spot visit was being duly considered and that a reply would be communicated soon.

At the 32<sup>nd</sup> Standing Committee meeting the Secretariat regretted to inform that no new information had been received since.

In the absence of delegates from Greece, the Chair gave the floor to the representative of MEDASSET, whom summarised the content of the reports submitted in 2012. MEDASSET used a power-point presentation illustrating with photos some few examples of degradation collected in 2011-2012, including the construction of four roads within the core Natura 2000 area, and other disturbing human activities as, for instance, the opening of beach bars (generating light pollution and noise), fisheries with fishing vessels operating too close to the shoreline in the Southern Kyparissia Bay, the use of heavy machinery for levelling, clearing, etc.

Moreover, MEDASSET reported that the Municipality of Trifylia continued the construction of a road network within the Natura 2000 area without either an Environmental Impact Assessment or authorisation from the Ministry of Environment. The Ministry was alerted to these works, which nevertheless continued unabated in 2012. MEDASSET concluded by requesting that a case-file be open.

The delegate of the European Union referred to the report sent to the Secretariat, informing that a field visit was carried out by the Commission services in July 2012. In the light of the findings, as well as the reply of the Greek authorities to the Letter of Formal Notice, the Commission issued in September 2012 a Reasoned Opinion under Article 258 of the Lisbon Treaty for insufficient protection of the area. In case of referral to the Court of Justice of the EU, the Commission would not exclude to ask the Court for interim measures.

Regretting the absence of delegates from Greece, the Committee further stressed the lack of relevant and substantial communications from the authorities. It decided to keep the complaint as a possible file, emphasising on the need to be informed by the authorities on the state of the situation in the area. The Committee instructed the Secretariat to request to the authorities, the NGOs and the EU, updated and complete reports on this important issue.

In January 2013 the Secretariat sent Greek authorities the decision of the Standing Committee together with a specific request inviting the Party to report on the state of conservation and management of the area, enforcement of relevant legislation, assessment of possible negative impact of the tourism developments, and mitigation measures envisaged.

In reply to this request, on 15<sup>th</sup> March, the Secretariat received a short e-mail summarising the content of a letter sent by Greek authorities to the European Commission about the official schedule foreseen by the Greek Government to prevent further degradation of the natural habitats and the improvement of the situation.

However, in March 2013 the complainant sent an updated report about the information submitted by the Ministry of Environment Energy & Climate Change to the European Commission. A detailed Action Plan for the protection of the area in question was being elaborated with the aim to halt any development works in the area until the issuance of a Ministerial Decision, which would constitute the basis for the protection of the area until a Presidential Decree would be in place.

The Ministerial Decision should be drafted based on the Special Environmental Study (SES) carried out by ARCHELON in 2002. A Steering Committee consisting of members representing Local and National Authorities, NGOs and experts was established in order to supervise the implementation of the afore mentioned Action Plan.

MEDASSET further informed about some other unpleasant developments, occurred despite the assurances of the Ministry, including the building – in November 2012 - of three houses in the sand dunes of the core nesting area near Vounaki hill, for which a permit was issued outside the city planning area.

Moreover, on 20<sup>th</sup> February 2013, a part of the back of the beach in the core nesting area was plowed, resulting one more time in the destruction of dune vegetation.

In conclusion, MEDASSET requested to the Standing Committee to screen again the complaint, and urged the Secretariat to follow up through the Greek Government the progress made over the Action Plan and in particular over the cessation of all infrastructure and/or development activities, which pose an immense threat for Thines Kyparissias.

The Bureau reiterated its request to Greek authorities for timely communication and sound information, and noted that enforcement was still a major issue. It decided to screen again the complaint at its next meeting and instructed the Secretariat to urge Greek authorities to send an official progress report informing: on the state of conservation and management of the area; on enforcement of relevant legislation and administrative decisions (including more particularly the execution of the demolition protocols); on the adoption of the measures whose implementation is envisaged as of June 2013; and on the progress made over the Action Plan, particularly regarding the cessation of disturbing activities and infrastructures.

The Secretariat regretted to inform that its letter to the authorities of May 2013 and the reminders sent until end of July remained unanswered.

In August 2013 the complainant sent an update focussing on the developments since February 2013:

1. On Kalo Nero Beach (O Sector): the Illegal wooden platforms remained despite the demolition protocols that were issued from the Land Management Agency of Kalamata. Sunbeds and umbrellas placed late May without the necessary permissions still occupied almost the whole beach and were not removed at night-time. Other disturbances reported by the complainant were intense light pollution and excessive vehicular traffic on the coast road of Kalo Nero. The Municipality of Trifylia did not equip the area with informative signs and prevented Archelon to erect the seasonal information station. The complainant denounced a worsening situation and an increase in the number of tourists on the beach at night.
2. Beach Sector between Neda River and Kalo Nero beach (A, B, C Sectors): The Plowing of the dunes recorded in February 2013 was repeated in April 2013 (with the blessings of the Mayor of Trifylia). The construction of the houses was progressing, while planning permission was issued for the construction of another 2 buildings in the area. However, the issuance of building permits had been suspended for a part of the NATURA 2000 site since late May 2013 (Bill (FEK): 180/24-5-2013).

Intense light pollution at night and lack of informative sign-posting were a threat also to this area.

According to ARCHELON's investigations, adult turtles that attempted to nest returned to the sea without successfully doing so. In addition, a high number of nests were purposefully vandalised almost on a daily basis since the start of the nesting season. Moreover, ARCHELON's personnel had been victim of physical and verbal offences and the scientific equipment was stolen.

No Action Plan had been elaborated for the area in question at that time, while the Steering Committee responsible for supervising the implementation of the Action Plan and for drafting a Ministerial Decision (MD) met only twice.

Regretting the lack of concrete information on the conservation and management of the area, as well as the enforcement of relevant legislation, the Bureau suggested, at its September meeting, that the case file should be discussed as a file open at the 33<sup>rd</sup> Standing Committee meeting.

Greek authorities didn't attend the 33<sup>rd</sup> Committee meeting but addressed a report in October 2013 informing that the Ministerial Decision of Suspension/Prohibition of all construction and agricultural activities in the broader coastal area was issued in May; a Ministerial Decision issued in July had put in place a basic set of management measures concerning the reproduction of the sea turtle; in June the authorities commissioned to a Professor of the University of Athens a detailed study of the area in order to provide all the necessary environmental data that should form the basis of a Joint Ministerial Decision.

Moreover, the authorities announced that in January 2014 there would be a Decision offering a specific legal protection regime for the site (GR 2550005) during the next 2 (+1) years. This should have included an integrated management plan and measures for the cessation of all disturbing activities and infrastructures with an emphasis to sand dune restoration, where possible.

After examining the presentation of the complainant, which provided examples of habitat degradation due to the recent development of roads, large and small-scale housing development plans, installation of green-housing, and the presence of heavy machinery and vehicles on the nesting beaches the Committee expressed worries for the continued developments in the Natura 2000 site and the possible threats that these may cause to the habitats and species of the area. Considering the matter as urgent, the Committee decided to keep the case file open and instructed the Secretariat to seek the agreement of Greece on an on-the-spot appraisal to be carried out in the first semester of next year.

The Secretariat obtained the agreement of the authorities on an on-the-spot appraisal in May 2014. Dr Paolo Casale, Research fellow at the University of Rome "La Sapienza", scientific coordinator of the sea turtle project of WWF Italy and Member of the IUCN SSC Marine Turtle Specialist Group was entrusted with the task of leading the on-the-spot visit, assess the situation, and prepare a set of possible recommendations to the Standing Committee's attention.

The on-the-spot appraisal took place on 14-16 July 2014. The expert, accompanied by a member of the Secretariat as well as representatives of the authorities and of the NGOs, visited the authorities in Athens and conducted both night-time and daylight visits to the core nesting area in Thyne Kyparissias.

According to the expert, among the potential problems, the most urgent one was the building of ca. 50 houses along the coast in the dune area, as this development would directly and indirectly induce a high increase of disturbance to nesting females and hatchlings at the nesting beach. Moreover, the expert identified a series of problems which confirmed some of the fears expressed by the complainants and namely: light pollution from tourism infrastructures, private houses and public lights; the presence of six roads perpendicular to the seashore and over the dunes; camping on the beach; attacks from feral dogs.

However, the expert also acknowledged an improvement of the situation in comparison to what reported by the NGO in the past years, particularly thanks to actions undertaken by the municipality of Trifylia and the Ministry of Environment in respect to the delivery of construction licenses (halted by decree), the removal of canteens on the beach, the closing of the roads perpendicular to the seashore, and the management of beach furniture.

In conclusion, the expert prepared a set of recommended actions which, if implemented, should lead to an improvement of the situation. The main recommendation was to give the most important areas for marine nesting a protection status equivalent to the one of National Park, and to permanently prohibit the construction of any villas, buildings, roads or infrastructure in order to keep those areas in a natural state. Other measures concerned the restoration of the original dune and forest habitat, the proper management of the area, the management of the problem of photo-pollution and the control of feral dogs. The report and recommended actions were made available in document T-PVS/Files (2014) 49, and forwarded to Greek authorities for comments.

At the Standing Committee meeting the European Union informed that, following the assessment of the Reasoned Opinion received from the Greek authorities in 2013, the Commission decided in March 2014 to refer the case to the Court for breach of EU legislation (Directive 92/43). The application was being prepared.

Both the delegate of Greece and the representative of MEDASSET presented their respective comments to the expert's report, as well as to the draft Recommendation. The latter was slightly amended and further adopted. The Committee kept the complaint as an open file and decided to review the monitoring of the implementation of the relevant Recommendation at its next meeting.

In August 2015 the Secretariat received updated reports from both the national authorities and the complainant. Moreover, a short assessment of the situation on-the-spot was also included in the independent legal report on the implementation of the Bern Convention in Greece [document T-PVS/Inf (2015) 22].

Concerning the report of the authorities, it informs about the efficient implementation of a whole set of measures to ensure the proper conservation of the protected site, in close cooperation with the NGO ARCHELON. Among these measures, the newest ones relate to:

- ✓ Provisions to suspend the issuing of new building permissions and the prohibition of other works;
- ✓ Restrictions for licensing of installations for bathers on the beaches for this summer;
- ✓ New procedures for the appropriate assessment of development plans and projects.

Moreover, the authorities informed that they are working at a body of regulations that should allow for a unified legal protection framework for all concerned SAC. However, some procedural/formal obstacles prevented to achieve faster progress with the adoption of the relevant Presidential Decree. (It should be noted that the expert in charge of the legal report on the implementation of the Convention in Greece says that one of the reasons why the draft Presidential Decree on the operation of the Kyparissia protected area was rejected by the Council of State was that it declared the park to be a regional park rather than a national park, thereby allowing additional activities to take place in the park. A new draft Presidential Decree is expected in the autumn of 2015).

In addition, the authorities list the rules included in the Ministerial Decision issued for fixing the restrictions on the beach area for summer 2015. They further inform that the issuing of building permits and execution of works is suspended in the egg-laying zone and the surrounding terrestrial area since 2013, by mean of consecutive Decisions that are renewed every year since.

MEDASSET also addressed an updated report analysing each of the recommendations made by the Standing Committee, and concluding that there was no improvement in the protection and management of the sea turtle beaches in Kyparissia over the past year. On the draft Presidential Decree, MEDASSET confirm that it was rejected because of procedural/formal problems, but clarifies that the Council of State took the opportunity for further commenting on the substance, finding that the designation of the Natura 2000 site as a regional park would not grant to the area a sufficient degree of protection. The Court also recommended that sand gravel extraction throughout the park be forbidden.

Moreover, the recommended restoration work has not taken place, and the temporary blocking of the roads leading to the beach have been removed. No actions have been taken to reinstate the previous dune ecosystem in houses built within the vicinity of nesting areas, nor have any actions been taken to reduce photo-pollution, with unlicensed taverns still operating on or close to the beach at night. Furthermore, cultivation of water melons and market vegetables continues on the dune area, beach equipment is not removed at night, fishing with nets near the beach is not forbidden and is a widespread practice. It further seems that there are no controls or measures to avoid the access of people and cars to the beach at night, and that the issue of feral dogs, which is under the responsibility of the local council, didn't receive an adequate response.

At the 35<sup>th</sup> Standing Committee meeting in November 2015, the complainant NGO expressed a concern over the lack of progress during the 2015 nesting season, despite the adoption of a specific Recommendation in December 2014.

The Standing Committee decided that the issuing of a new Presidential Decree enabling for granting the appropriate protective status to the area is probably the most urgent measure that should be taken by the authorities. It therefore decided to keep the case-file open, and to call on the Greek Government for the urgent and full implementation of the Recommendation No. 174 (2014).

Finally the Committee regretted the absence of delegates of Greece and invited the country to ensure that next year the Bureau receives full reports on specific measures, and that the progress achieved are presented by Greece to the 36<sup>th</sup> Standing Committee meeting.

The Secretariat issued a reporting request to the Greek authorities as mandated by the Committee, but the request remained unanswered by the second Bureau meeting.

In its updated report to the Convention from July 2016, the European Union informed that on 18<sup>th</sup> February the Advocate General of the Court of Justice of the European Union issued her conclusions on case number C-504/14 and that the Court ruling is currently awaited.

According to the advocate general conclusions':

- 1) the Hellenic Republic failed to ensure the necessary conservation measures for the *Caretta caretta* sea turtle in the Kyparissia Sand Dunes' site (Natura 2000 code GR2550005);
- 2) failed to ensure the granting of consent for three holiday homes in Vounaki and construction measures in Agiannakis, are subjected to an appropriate assessment of the compatibility of its implications with the conservation objectives for the Kyparissia Sand Dunes' site and;
- 3) failed to adopt a comprehensive legislative framework to protect the *Caretta caretta* sea turtle in the "Kyparissia Sand Dunes" special area of conservation.

MEDASSET, the complainant NGO, submitted a spontaneous report to the Bureau, detailing the current situation on the spot regarding the different recommendations from Recommendation No. 174 (2014) with accompanying photos. It further informed that on 24<sup>th</sup> May 2016, the Ministry of Environment issued a new Ministerial Decision that halts any type of construction activity in the area for the next two years. Because of the temporary nature of the Decision, the need for a Presidential Decree remains high.

In their short report submitted for the 36<sup>th</sup> meeting of the Standing Committee, the Greek national authorities informed that the Presidential Decree for the protection of, both the marine and terrestrial areas of Kyparissia Bay has been sent for legal review to the relevant department of the Ministry of Environment and Energy. After the legal-technical treatment, the Presidential Decree will be sent initially for approval to the Alternate Minister and Minister of Environment and Energy and then to the Council of State in order to process it. They further stressed that until the adoption of a management plan for the area, a Ministerial decision restricts the activities on the nesting areas of the species *Caretta caretta* for a period of 3 years.

In their updated report for the 36<sup>th</sup> meeting of the Committee, the complainant NGO MEDASSET informs point by point the follow-up given to the operational parts of the Recommendation No. 174 (2014) and similarly to the information submitted by the NGO ARCHELON, they inform on little proactive measures taken by the national authorities.



➤ **2012/9: Presumed degradation of nesting beaches in Fethiye and Patara SPAs (Turkey)**

At the Bureau meeting in September 2012 the Secretariat informed that MEDASSET submitted an updated report regarding the implementation by Turkey of Recommendation No. 66 (1998) on the conservation status of some nesting beaches for marine turtles. Although in 2011 some valuable steps were made to protect the loggerhead nesting areas at the Fethiye SPA, the NGO was concerned by the fact that several of these measures were not sustained in 2012.

In the light of these new elements the Bureau decided to include the follow-up of that Recommendation on next Standing Committee meeting agenda.

At the 32<sup>nd</sup> Standing Committee meeting the delegate of Turkey informed on the measures undertaken to protect the nests in the area, including caging, tagging of animals, awareness raising and monitoring.

The representative of MEDASSET made a detailed presentation based on photo supports showing, despite some efforts from the authorities, lack of guarding and of information signs, litter and light pollution, plantation of introduced species, unregulated motorised water sports and presence of people and vehicles on nesting beaches at night. MEDASSET stressed that, in 2012, one new wooden hut with a concrete patio was installed on the nesting beach, and a hotel was built on the beachfront, destroying the last section of the remaining wetland while Recommendation No. 66 (1998) specifically states that remaining unbuilt beach plots should be secured against development.

MEDASSET proposed that a file should be open regarding Fethiye SPA, and concluded its intervention by calling upon Turkish government to inform on the neutralisation and removal of the toxic waste as well as sea turtle conservation efforts in Kazanlı. MEDASSET further informed that a new complaint had been lodged before the Convention regarding the Patara SPA.

The delegate of Turkey acknowledged that the images presenting the situation in Fethiye were “uncomfortable” and stated that he expected matters to improve, as certain organisational issues related to the management of the beaches were to be resolved soon.

The delegate of Norway considered that there were reasons for concern, but welcomed the conscious reaction of the delegate of Turkey. He therefore suggested, with the support of the delegate of the Slovak Republic, that the file be dealt as a possible file.

In January 2013 the Secretariat forwarded the Standing Committee’s decision to the authorities of Turkey, together with a reporting request. Turkish authorities replied on 15<sup>th</sup> March asked for an extension of the deadline for submitting the information requested.

Meanwhile, the NGO submitted updated information on the situation in Patara, Fethiye and Kazanlı, urging the Secretariat to consider the complaints lodged for Fethiye SPA and Patara SPA as distinct.

In fact, MEDASSET argued that on the one hand the complaint and the subsequent update reports submitted to the Secretariat referring to Fethiye SPA highlighted the lack of implementation of conservation and management measures, as well as the construction of new hotels and other buildings on the nesting beaches; on the other hand, the problems put forward in the complaint referring to Patara SPA focussed on large scale construction projects taking place within the protected area and failure of the land use and management plan to secure adequate protection status to the SPA at both the ecological and archaeological heritage management level. MEDASSET offered to invite an expert on land use and heritage site management to further inform the Standing Committee, if requested by the Bureau.

Regarding more concretely Fethiye SPA, and noting the continued decline of nest numbers in the area possibly due to poor management and protection of the habitat, MEDASSET requested a detailed report by the Turkish authorities with an account of conservation and management measures to be applied in Fethiye SPA before and during the 2013 nesting season.

Concerning Kazanlı, MEDASSET requested that the issue be dealt with as a follow up to Case File No. 2000/1, which the Bureau dismissed in 2009 in order to consider the complaint under the general monitoring of the implementation of Recommendation No. 66 (1998). However, MEDASSET asked that Recommendation No. 95 (2002) on the conservation of marine turtles in Kazanlı be put on the agenda of the 33<sup>rd</sup> Standing Committee meeting since there had been no news or report on progress for the safe disposal of the 1.5 million tons of highly toxic solid waste located right next to Kazanlı's most important green turtle nesting site, posing a threat to the environment and human health.

In April 2013, after assessing the file, the Bureau took note of the concern and requests expressed by MEDASSET and agreed to monitor the implementation of Recommendation No. 95 (2002) at next Standing Committee meeting. However, the Bureau still considered the conservation and management issues related to Fethiye and Patara SPA as interlinked and decided to address in conjunction.

The report of the national authorities reached the Secretariat a few days after the Bureau meeting.

The authorities explained that, following the restructuring of the Ministry of Environment, the General Directorate for the Protection of Natural Assets had been appointed as the body for the Special Environmental Protection Areas (SEPAs). The latter can be subject to urban developments, provided that these are foreseen in the so-called Master Plans, which fixes the conditions for land use and density of developments in the respective areas.

More specifically regarding Patara, the report informed about the legal status of the area, stressing that the zone where the villas are constructed is a 3<sup>rd</sup> Degree Archaeological Site (DAS). Moreover, the construction plans related to Patara 1<sup>st</sup> DAS had been approved by decree. In addition, the report summarised the measures taken for ensuring sea turtle conservation in the period between May and September 2012, and provided some data collected as a result of monitoring studies carried out in the same timeframe (i.e. number of nests, tracks, predation, accidents, etc.).

Concerning Fethiye SEPA, the report provided the same kind of data, and further informed on more specific conservation actions, like for example the caging of nests against human activities and predators, a measure which concerned 11.23 % of the nests. Public awareness actions were also implemented at night at the "Caretta Info Desk" on Çalış beach, targeting for instance local and foreign tourists.

The Secretariat acknowledged the encouraging information on some conservation actions carried out by the authorities in 2012, but invited them to complete the report submitted with more detailed information on some of the issues raised in the Secretariat's correspondence, for instance the measures and actions whose implementation was foreseen that year, as well as the steps towards the removal of illegal or unauthorised constructions in both Fethiye and Patara SPAs. The deadline for the complementary information was set to 6<sup>th</sup> September 2013.

On 9<sup>th</sup> September 2013 the Secretariat received the report by the complainant. Regarding Fethiye, the report listed and described into details the impact of the main threats to the nesting population, affirming that in 2013 there was no improvement to the protection and effective management of the nesting beaches, with the exception of beach furniture management in a small part of the nesting beaches and some new signage which, however, remained insufficient. The main threats continued to be the lack of effective signage, the presence of beach furniture, beach access at night, light pollution, plantation, and illegal tourism infrastructure. The report included a list of recommendations, namely regarding the need of reinforcing guarding on the beaches, of continuing the programmes of scientific monitoring and nest protection, the need of appropriately managing beach furniture, preventing the access to the beaches at night, removing the plantations and securing the remaining unbuilt beach area against developments.

Regarding Patara, the complainant reported that the building of 27 villas to be inhabited by summer 2014 had been completed. The complainant further recalled that the whole construction project concerns the building of around 400-750 villas in total and stressed the need of urgently reconsidering the scale of

the project. Moreover, like in Fethiye, signage was insufficient and apparently no guarding was foreseen to enforce conservation rules on the nesting beaches, unlike previous years. The complainant reiterated its proposal to bring an expert on land use and heritage site management to further inform the Standing Committee, if requested by the Bureau.

At its meeting of September 2013, the Bureau requested the Party to provide the Standing Committee with an updated report, including more recent information related to, among others, the breeding season.

At the 33<sup>rd</sup> Standing Committee meeting the representative of the NGO presented the most updated information, reiterating the problems already spotted in previous reports. More concretely, for Patara the NGO requested the re-evaluation of the scale of the tourism development project in the 3<sup>rd</sup> Degree Archaeological Area, the implementation of an Environmental Impact Assessment, and the elaboration of an updated SPA management plan to manage visitor flows prior to the 2014 tourist season.

On Fethiye, the NGO showed pictures taken during the summer season in 2013 clearly showing the lack of effective signage and guarding, lack of management of the beach furniture, beach access at night and consequent light pollution, creation of parking spaces, wooden pavilions, temporary discos, and even a new road.

The delegate of Turkey explained that the authorities are aware of the situation and committed to revert it. In fact, the process of re-organisation of the competencies within the bodies responsible for nature conservation had an impact on the efficiency of the response of the government, but some measures were already envisaged to ensure that the effective management of both areas is done in compliance with the recommendations of the Standing Committee.

In the light of the above, the Committee decided to open the file as a mean for encouraging relevant bodies at national level to work towards greater accountability, co-operation, and responsibility. Besides, the Committee instructed the Secretariat to promptly approach Turkish authorities with a detailed reporting request, and mandated the Chair of the Standing Committee to convey the Committee's concern to the responsible national authorities, together with the relevant proposals of assistance.

The Secretariat addressed a letter to Turkish authorities already in January 2014, conveying the worries of the Committee as well as the proposal of assistance, and requesting an updated report on the progress towards the management of the area. Due to a communication problem, the delegate requested an extension of the deadlines fixed by the Secretariat until the 28<sup>th</sup> March.

Therefore the Secretariat received first the report from the complainant, concerning both Fethiye and Patara. Regarding Fethiye SPA, MEDASSET denounced the lack of preparatory actions by the authorities to improve the management and conservation of sea turtle nesting beaches. In addition, the complainant alerted on the promotion by the authorities of a "public interest decision" allowing for the relocation and construction of a shipyard/drydock on Akgöl nesting beach. The latter is an "old" project regularly denounced by MEDASSET since its construction could undermine conservation efforts in the area and have a severe impact on a pristine habitat. In its report, MEDASSET addressed a series of requests to Turkish authorities, including the preparation of a SPA management plan for both the land and marine areas, the urgent implementation of a comprehensive action plan ensuring proper management and adequate protection of the SPA, and the allocation of the necessary financial and human resources for the enforcement of regulations. Furthermore, the complainant requested to the government to reject the plans for the construction of the drydock in Akgöl.

To conclude on Fethiye, MEDASSET asked the Bureau to consider the possibility of an on-the-spot assessment as a way forward in case no relevant information is communicated by the national authorities on the complaint, as well as to request an official update on the status of the shipyard construction project.

Regarding Patara, MEDASSET informed that the construction of another 300 villas inside the protected area had been documented in several press articles since January 2014. According to the complainant the summer house construction project is incompatible with the Bern Convention's related recommendations. The NGO therefore requested to the national authorities to take a clear position on the

matter, to re-evaluate the scale of the construction project, to revise the SPA management plan and ensure its implementation through the necessary human and financial resources before May 2014. As for Fethiye, the complainant concluded by requesting that the Bureau consider the possibility of an on-the-spot assessment in case of lack of reporting by the Turkish authorities.

The government report recognised the lack of a local management unit, as well as of physical points of entry/exits at Fethiye-Göcek SEPA. Although the control of the area was not adequately maintained, the report informed about the results of the studies carried out during the 2013 nesting season, with data on the number of emergencies, of nests caged against predation and human activities, and hatching. Regarding the latter, only 1.92 % of the nests did not produce any hatchlings and, after considering the unfertilized eggs and the death in shell, the hatching success was calculated at 91.99 %. The report further contained pictures documenting some public awareness activities, namely with hotel owners, personnel and guests, as well as the installation of three info signs at the main entrance to the beach at Çalış, Yanıklar and Akgöl sections.

Concerning Patara, the authorities noted that the area where the villas were to be constructed is about 2 km away from the beach. The Implementation Plans for the construction project received all necessary authorisations and were prepared by the Ministry of Culture and Tourism and endorsed by the Antalya Culture and Natural Heritage Protection Regional Council. Moreover, the scale of the initial plans had been already reduced of approximately 75 %.

More concretely regarding sea turtle protection activities, the report informed about the results of the studies conducted between May and September 2013, showing a high percentage of eggs suffering from predation, mainly by foxes. However, around 90 % of hatched turtles managed to reach the sea. Some awareness activities, similar to those carried out in Fethiye, were also organised in Patara.

The Bureau acknowledged the information submitted but requested to receive more detailed information from the authorities on the plans for the forthcoming tourism season, as well as on the measures to be implemented for ensuring the proper conservation of the areas in the future. It also requested the official position of the authorities with regards to the possible relocation and construction of the shipyard on Akgöl.

The Secretariat addressed a specific reporting request to the authorities at the beginning of May, followed by several reminders. However, no new information was submitted by the authorities on time for the second Bureau meeting. In the meantime, the NGO submitted an updated report, mainly to question some of the assertions of the authorities.

A first contradiction concerned the location of the summer house developments, which the NGO considered to be more near the core nesting area than what affirmed by the authorities. In addition, the NGO reported about some press articles informing that 122 houses would be built on the land belonging to the HITIT Housing Cooperative, within the protected area.

Besides, the NGO detailed some other persisting conservation problems, such as the lack of signage, inadequate beach furniture management, discard of pesticide bottles onto the beach and into the sea, use of fishing nets close to the shore during the nesting and hatching season, the construction of a new road and the establishment of a new beach bar in Çayağzı beach. To document these allegations the NGOs included photos in its report.

The report concluded with a series of requests addressed to both the Turkish authorities and the Standing Committee.

The Bureau regretted the lack of updated information from Turkey and decided to keep the case-file open and to ask to the Standing Committee to ensure its follow-up, including by considering the possibility of an on-the-spot appraisal depending on the information submitted and provided there is agreement of the Party.

At the Standing Committee meeting the delegate of Turkey made an oral statement reiterating that, in Patara, the construction of the villas is taking place outside the nesting beaches, in compliance with national legislation. As for Fethiye, he recognised some problems related to the management and control of the area, due to high tourism pressure.

He further provided information on the measures taken to improve awareness, as well as the results of the last nest conservation activities. He concluded by reaffirming the commitment of his authorities for solving the existing problems by making nature conservation compatible with human exploitation of the areas.

The Standing Committee emphasised again on the need for a positive response to the reporting requests of the Bureau and the Secretariat. The Committee also considered the report presented by the complainant, confirming that the management of the beaches is still inadequate, and informing about new construction and about further construction projects already planned.

At the proposal of the Chair, and following the agreement of the concerned Party, the Standing Committee, with the agreement of the Party, decided to keep the case-file open and to conduct an on-the-spot appraisal to the relevant sites in view of identifying a set of recommended actions to be submitted for consideration of the Committee at its next meeting.

Dr Paolo Casale, research fellow at the University of Rome “La Sapienza”, scientific coordinator of the sea turtle project carried out by WWF Italy and Member of the IUCN SSC Marine Turtle Specialist Group carried out the visit.

The latter took place on 28-31 July, with the purpose of identifying a set of recommended actions that – if implemented – would avoid Turkey being in breach of the Convention. The visit included day and night assessments of both Specially Protected Areas, as well as four separate meetings with the authorities and with the stakeholders of both Antalya and Mugla provinces. The mission was observed by scientists of the IUCN and the WWF Turkey.

According to the expert’s report, common major problems for both areas seem to be: the lack of adequate management of the beaches; the lack of education and public awareness on the needs of marine turtles and the intrinsic value of nature; and the degradation of the system of protection for all the areas classified as Specially Protected Areas (SPAs) that passed – in 2012 – from the responsibility of the Ministry of Water Affairs and Forestry to the one of the Ministry of Environment. The legislative environmental framework of the latter seems inadequate to ensure the necessary protection of outstanding areas like those which make the object of the present complaint.

At its 35<sup>th</sup> meeting, after considering the expert report from the OSA and the opinion of both the Government and the NGOs, the Standing Committee adopted two Recommendations (No. 182 (2015) on the conservation of *Caretta caretta* and its habitat at Patara Nesting Beach and No. 183 (2015) on the conservation, management and restauration of Fethiye Nesting Beaches).

It further noted that while Patara nesting beach is still relatively pristine, the impact of further tourism development and the lack of proper enforcement of the measures - already recommended - may compromise its high natural value. Concerning Fethiye, the Committee expressed concerns for the conclusions of the expert’s report regarding the severe habitat degradation already occurred, but took further note of the commitment of Turkey to properly addressing the ecological and management problems identified.

In July 2016, as requested, the Turkish authorities submitted two separate reports on the progress in the implementation of the two abovementioned recommendations:

- Regarding Patara, the authorities informed on a special budget put aside by the DG for the protection of Natural Assets under the Ministry of Environment and Urbanization which was used for various conservation and monitoring activities between May and August 2016: scientific activities, educational activities, posting warning signs at the beginning of the season, cages to be used for nest

protection, lodge on the beach to serve as information desk, dissemination of leaflets in Turkish and English, Instagram account created to share photos and raise awareness on the issue, involvement of volunteer tourists in conservation activities, etc.

- Regarding Fethiye, the national authorities report on the conservation and monitoring activities which took place in the same period (May-August 2016): conservation studies on spotting new nests, caging and relocating nests, education activities for managers and employees of hotels and cafeterias, the installation of an information booth in Fethiye Calis beach, use of turtle friendly lights, changes made to the landscape design of the access to Calis beach, in order to prevent access by vehicles, and on the commitments made by several companies working in the area in order to receive a Turtle Friendly Enterprise Certificate at the end of the season.

The complainant NGO, MEDASSET, also submitted their report on progress in the implementation of both recommendations in August 2016, as well as an update in October 2016:

- For both areas, the NGO reports in detail on the remaining conservation issues: lack of staff for monitoring and management, lack of clear zoning of the area, no control over vehicle access, nearshore fishing, horse riding, poor management of beach furniture, etc.
- Specifically on Patara, the NGO concludes that there is no progress in improving the conservation status of the nesting beaches as proscribed in point 1 of Recommendation No. 182 (2015) and explain that a small project, only limited to season 2016, was entrusted to Adnan Menderes University and the team contracted was very small with only two experienced volunteers, monitoring only the southern part of the beach and conducting irregular nightshifts and starting their morning shifts only at 8am. They recognised some efforts on litter management, also by local communities as well as the installation of a few information signs placed near the beaches, but these only inform about basic regulations and not on the ecological value of the area.
- Specifically on Fethiye, the NGO informs on continuing coastal development with a new Coffee place at the Calis beach, additional pavilions and sunbeds, new sport facilities, etc. They explain a monitoring and conservation of the turtle nests was carried out by Pamukkale University and started in June 2016 while the nesting began in May. The contract is again short-term for only one season.

➤ **2013/1: Hydro power development within the territory of the Mavrovo National Park (“The former Yugoslav Republic of Macedonia”)**

The complaint was submitted in March 2013 by the NGO “Eco-vest - Center for environmental research and information” to denounce a possible breach of the Convention by “The former Yugoslav Republic of Macedonia” with regards to the development of hydro-power projects within the territory of the Mavrovo National Park, an Emerald candidate site since 2011.

According to the complainant, the construction of several hydro-power plants and supporting infrastructures (roads, bridges and transmission lines) will result in the direct destruction of forests, severe disturbance of water sources and fragmentation of wildlife habitats – the home of numerous strictly protected species of plants, mammals, birds, amphibians and reptiles listed in Appendices I and II of the Bern Convention. The complainant emphasised that some of these species, namely the *Lynx lynx balcanicus*, might be critically endangered if the projects are implemented.

The Secretariat addressed a reporting request to the government, stressing that according to Recommendation No. 162 (2012) of the Standing Committee, on the conservation of large carnivore populations in Europe requesting special conservation action, “The former Yugoslav Republic of Macedonia” should assess the environmental impact on the lynx population of dams in the Mavrovo National Park - a site identified as a candidate for the Emerald Network - and consider abandoning the project if the dam poses a risk of endangering the lynx population. The Secretariat also reminded that, according to Recommendation No. 157 (2011) of the Standing Committee, on the status of candidate

Emerald sites and guidelines on the criteria for their nomination, national authorities should “take the necessary protection and conservation measures in order to maintain the ecological characteristics of the candidate Emerald sites”, until their full inclusion in the Emerald Network.

The Government report, received in September 2013, informed that an Environmental Impact Assessment Study for the hydropower plant project Boshkov Most was prepared by GEING Skopje, “The former Yugoslav Republic of Macedonia” based engineering company operating in the Balkan area. Additionally, a 4-seasons biodiversity monitoring had been carried out by a team of experts on invertebrate and vertebrate species. The report said that according to EIAS and monitoring study, the hydropower plant project Boshkov Most satisfied entirely the requirements of the national legislation and that a decision authorising the development of Boshkov Most’s project had been already issued. The report did not provide conclusions from the EIAS or monitoring study allowing to judge about possible impacts of the project on the species and their habitat, referred to by the complainant. The report further informed that the Ministry of Environment and Physical Planning (MEPP) instructed the ELEM to implement an Environmental Impact Assessment Study for the hydropower plant project Lukovo. An international tender was published and the company BRL from France was selected to develop the EIA Study by engaging international and national experts. When accomplished, the ELEM would send the Study to the independent expert committee established by MEPP, for review.

At its meeting in September 2013, the Bureau decided to keep the complaint on stand-by pending the authorities’ reply and asked the Secretariat to contact them with a request to provide more detailed information about the possible impacts of the hydropower project implementation in Mavrovo National Park on species and habitats.

In a report submitted in January 2014 the complainant informed that a lawsuit was pending before the Administrative court against the decision of the Ministry of environment to approve an incomplete EIA study for the hydropower plant project Boshkov Most. The complainant underlined that the irregularities on the EIA study were confirmed by a EBRD compliance review report (January 2014) which concluded that the EIA was “not sufficiently comprehensive and conclusive”.

In a short report submitted in March 2014, the national authorities informed that the EIA for the Hydropower plant Boshkov Most was concluded, and that the results of the biodiversity monitoring implemented were taken into account in the final EIA report. The EIA for the Hydropower Plant Lukovo Pole was under preparation. No mention was made by the authorities of the pending lawsuits against the EIA results and procedures, reported on by the complainant.

At its meeting in April 2014, the Bureau regretted the lack of informative reports on behalf of the national authorities. The Bureau instructed the Secretariat to contact again the authorities of “The former Yugoslav Republic of Macedonia” for more detailed and comprehensive information on what was added to the EIAs study further to the biodiversity monitoring, what was already implemented on the site and under which conditions, as well as on the pending lawsuit.

The national authorities did not submit a report for the September 2014 meeting of the Bureau, but informed via e-mail that the EIA report for HPP Lukovo Pole was expected for the end of December 2014. The authorities claimed that they didn’t receive the reporting request sent by the Secretariat. The complainant, who was copied in the letters addressed by the Secretariat to the authorities, had - on the contrary - submitted detailed information regarding both hydropower plants’ projects. Regarding the Boshkov Most HPP project, the complainant informed on two pending lawsuits, (1) one claiming that the Ministry approved the EIA report based on insufficient data (supported by a compliance report of an independent experts charged by EBRD) and (2) a second one on denied access to the expert’s reports on Mavrovo HPP projects. In addition, the complainant claimed that the civil society organisations were supposed to participate to the bio-monitoring mentioned by the national authorities, but their comments and proposals were not included in the final EIA report. Comments on the insufficient data used for the bio-monitoring report were also made by the Vice-Chair of the IUCN World Commission on Protected Areas and other IUCN committees, as well as by Birdlife and national/international experts.

At its meeting in September 2014, the Bureau regretted the lack of information from the authorities of “The former Yugoslav Republic of Macedonia” and decided to forward the complaint as a possible file to the Standing Committee, inviting the national authorities to attend and to report in detail on the state of implementation of the projects, as well as on the pending lawsuits.

In December 2014, the Standing Committee took note of the latest updates presented by the delegate of “The former Yugoslav Republic of Macedonia” and the detailed presentation of the complainant. The Committee noted the importance of the area as key biodiversity hotspot, its status of National Park, and the concerns expressed by a number of international organisations and delegates over the negative impact of hydropower developments on the biodiversity of the area. The Committee further noted the pending adoption of a Management Plan for the Park, the pending lawsuit on the Environmental Impact Assessment for one of the hydro power plant's projects as well as the expected finalisation of the assessment for the second one.

The Committee decided to open a case file and instructed the Secretariat to seek the agreement of the Party for the organisation of an on-the-spot appraisal to the area in 2015, with the objective of collecting more information and data for the preparation of a draft recommendation to be submitted to the next Standing Committee meeting.

On 4<sup>th</sup> March 2015, the Minister of Environment and Physical Planning sent an official letter to the Secretariat confirming his agreement on the organisation of the on-the-spot appraisal. The European Union, the IUCN and WCPA requested to participate in the appraisal as Observers. The European Bank for Reconstruction and Development (EBRD), financing the project, has also been invited to join.

The visit took place on 24-25 June 2015. Mr Pierre Galland from Switzerland accepted to be the independent expert in charge of the mission.

The Council of Europe's delegation had meetings with the Minister of the Environment and Physical Planning, Mr Nurhan Izairy, as well as with the representatives of the company ELEM which is the project developer, the Director of the Mavrovo National Park managing authority, representatives of civil society organisations, including the complainant, representatives of the European Bank for Reconstruction and Development and various local stakeholders.

The delegation managed to visit the main localities of the two big hydro power projects, as well as an additional small HPP plant already implemented.

The Bureau noted that the development of the energy project might raise problems of compliance with the Convention and a possible incompatibility with the status of the area, which is an important protected wilderness area that must be preserved for future generations. It therefore instructed the Secretariat to forward the report of the independent expert also to the investors and financing bodies, with a request to take it into consideration for a more holistic approach to the matter, in view of finding a balance between energy developments needs and nature protection.

At its 35<sup>th</sup> meeting in December 2015, the Standing Committee adopted Recommendation No. 184 (2015) on the planned hydropower plants on the territory of the Mavrovo National Park, inviting “The former Yugoslav Republic of Macedonia” to suspend the implementation of the hydropower plants foreseen and related infrastructure until a Strategic Environmental Assessment will be completed and to keep the Standing Committee regularly informed about the progress in the implementation of this Recommendation.

A spontaneous report was sent by the complainant in February 2016 for the March meeting of the Bureau. The complainant wished to raise the attention of the Bureau on the fact that the World Bank dropped one of the questioned projects (the Lukovo Pole project). With regard to the other project, Boskov Most HPP, the report informed that the European Bank for Reconstruction and Development pledged to comply with the recommendation and put the project on hold until the Strategic Environmental Assessment is completed. Moreover, the complainant informs the Bureau of the construction of four new small hydropower plants funded privately.



The complainant asked the bodies of the Convention to address with the authorities some specific points, in particular to:

- ask the government to suspend the construction of the small hydropower plants in the park;
- postpone the adoption of the Law on re-proclamation of the Mavrovo NP;
- provide guidelines on the implementation of the recommendation to all stakeholders;
- ask that the Strategic Environmental Assessment is transparent and involves all stakeholders;
- remind the stakeholders of the importance to conduct activities setting within the Balkan lynx (*Lynx lynx balcanicus*) Recovery programme.

On 21<sup>st</sup> March 2016, the Government informed it was working on the implementation of Recommendation No. 184 (2015), in particular by launching a national programme for monitoring and recovery of the Balkan lynx and promised to keep the Secretariat updated on the progress.

The Bureau took note of this information, stressing that the building of small plants is in line with the recommendation adopted by the Standing Committee and instructed the secretariat to ask by the end of June 2016 for reports to both the authorities and the complainant. The Bureau encouraged the government to fully implement the recommendation of the Standing Committee.

The complainant sent an updated report in May 2016. The report informed that the number of conceded small hydropower projects had increased to 6, and that the construction work was expected to start in the spring. The complainant sent an official letter to the Ministry of Environment requesting the suspension of the concession for the 6 hydropower plants that were in project. The Water Department replied that the small hydropower projects were either conceded to a private investor or to the Municipality of Mavrovo Rostuse with public private partnership, and as such the Recommendation No. 184 (2015) did not apply.

The report further stated that after being finally granted access to the Elaborate for Environmental Protection (EEP) study and permits for the 4 conceded hydropower projects, the complainant identified problems with the quality of the elaborate and the conflict of the projects with the proposed zoning of the park. A complaint has therefore been submitted against the EEP permit to the Ministry of Environment.

The report also stressed that concerning the adoption of the EIA permit for Boskov Most, the Administrative Court ruled in favour of the complainant, considering that there was no proof that the Law on environment had been respected and the EIA study was complete. As a consequence, the Court cancelled the decision of the State Commission which refused the complaint of the NGO against the Ministry of Environment decision granting EIA permit for Boskov Most.

Finally, the report informed that the complainant has not yet been involved in the preparation of the Strategic Environmental Assessment.

On the 14<sup>th</sup> July, the Secretariat received another report from the complainant. It informed that the number of approval or plans to grant concessions to private investors of small hydro power plants increased to 17. At the date of the report, 2 were already built and 2 were under construction. The report stresses that almost all of the small hydro power plants are in remote, inaccessible areas of high natural value.

On 22<sup>nd</sup> July, the national authorities sent their report informing that the implementation of all the foreseen government projects (big and small) in the NP have been suspended until a SEA is completed, as recommended in Recommendation No. 184 (2015). In detail, the authorities state that the implementation of privately funded small/micro hydro plants in development before December 2015 are not subject to the Recommendation, however, concessioning for the remaining planned small/micro plants within the territory of the NP are suspended.

The authorities expect that the management plan of Mavrovo NP will be completed once the Law for the Re-Proclamation of the NP is adopted in Parliament. The outcomes of the SEA will be reflected in the Management Plan. Regarding the timeframe, the authorities cannot provide a firm date, but are making efforts to complete this before the next Standing Committee meeting.

In addition, the Government report comments in details and refutes the allegations by the complainant regarding the impacts of the construction of several hydro-power plants and supporting infrastructures.

The report further informs that the Government has initiated the establishment of a national program for the recovery of the Balkan lynx for the implementation of which the Government is currently looking for financial support. The concept paper of the project was also sent.

The national authorities' report also provides a conclusions' section in which they provide their opinion on the process leading to the adoption of the Recommendation and the Recommendation itself, nevertheless stating that they are following the recommendation and looking forward to work with the Convention until the case is closed.

In October, the national authorities submitted a short updated report for the attention of the 36th Standing Committee, informing that the SEA for the management plan of Mavrovo National Park will begin once the Law for Re-proclamation of the National Park has been adopted by the national Parliament.

In October, the complainant also submitted an updated report for the 36<sup>th</sup> meeting of the Standing Committee, informing they have not been invited to discuss any SEA preparation by the national authorities; neither have received information about the process.

They have also provided their opinion and arguments that an SEA focussing specifically on the on cumulative effects of all planned development activities on the territory of the Mavrovo National Park, as requested by Recommendation No. 184 (2015), is not an equivalent to the Strategic Environmental Assessment for the Mavrovo National Park Management Plan.

## 1.2 Possible files

### ➤ **2011/4: Turkey: threats to the Mediterranean monk seal (*Monachus monachus*)**

End of June 2011 the Secretariat received a complaint from the Middle East Technical University Institute of Marine Sciences regarding the development plans comprising the construction of a road as well as of a new marine terminal near Yesilovacik village (Silifke district, Mersin Province) which would eventually have a detrimental impact on the Mediterranean monk seal (*Monachus monachus*), a species listed in Appendix II of the Bern Convention (strictly protected fauna species).

The complainant expressed concern with regards to the location of the marine terminal, foreseen at just 500 meters away from a breeding cave acting as a bridge between the core monk seal colony of the area and the pioneers moving further east.

Moreover, the complainant considered that the breeding cave, formed by soft geological material, could eventually collapse once the planned road would be opened to lorry traffic, and that pollution, turbidity and noise would force the inhabitants to abandon the cave without having in the vicinity other caves with similar morphology. The complainant informed that an Environmental Impact Assessment was made by the Ministry of Environment and Forestry for the marine terminal although this had not apparently taken into account the critical importance of the chosen area for the Mediterranean monk seal.

The complainant highlighted that the Mediterranean monk seal is also protected by other international agreements, among which CMS, CITES and the Barcelona Convention.

The Bureau stressed that the monk seal is one of the world's most endangered mammal and considered the complaint with the utmost seriousness. It therefore requested more specific information to both Turkish authorities and the complainant.

In reply, the complainant sent an accurate report providing a summary of the main studies carried-out on this issue since the '90s. Regarding more concretely the breeding cave which is the object of this complaint, Balıklı cave, the plaintiff first stressed that Mediterranean monk seal was forced to abandon beach habitat due to human disturbance, hunting and habitat fragmentation, choosing -as a consequence- cave habitat for resting and reproduction; he further presented the results of long-term studies revealing that the total number of suitable caves in Mersin area is 37 out of which only 7 caves are located in the coast between Tasucu and Aydincik, and only one of them, Balıklı had the morphology suitable for whelping (and hence is used by pregnant mothers).

Taking into account the scarcity of suitable habitats, Mersin (Cilician) coast and the targeted breeding caves and the foraging areas were designated by the competent authorities as “No-take-zone” (sea) and “1<sup>st</sup> Degree Natural Asset” (land) already in 2007. The further studies carried out right after the enforcement of conservation measures showed that the response of the seals in Mersin was very positive with increased success in breeding as from 2002.

Concerning the morphology of the Balıklı cave the complainant explained that the West side of Mersin coast (Cilician basin where the cave is located) is characterised by ruggedness with steep mountain sand shoreline cliffs plunging into the Mediterranean. The geography on the coast is dominated by karst topography, but also by sand and sedimentary rocks. Balıklı is built by soft material mainly deposition of soil at the outskirts of the coastal ridge and therefore has a very fragile structure and a delicate ceiling. However, it is protected from prevailing winds (no risk for the pup to be wounded or die during very harsh winter storms as it is the case for other caves), and a shallow pool is located inside the cave, surrounded from right to left by a small platform, a beach, and some flat-topped rock blocks. For these reasons the complainant considered that the conservation of Balıklı cave is directly linked to the survival of the monk seal population in Mersin.

The Secretariat recalled the “Criteria for selecting underground habitats of biological value” appended to Recommendation No. 36 (1992) on the conservation of underground habitats, which suggests considering as underground habitats of ecological value or value for the heritage, those habitats where - among others - vulnerable, endemic or rare species are present; those habitats whose vulnerability may result either from danger of destruction of the habitat itself (quarrying, filling in, development) or from the destruction of its fauna by chemical or organic pollution, over-visiting or thoughtless hunting; those habitats which can either serve as a reference or be used for long-term follow up of populations and biotic communities.

In the light of the information received, the Bureau decided to forward the complaint to the Standing Committee as a possible file.

At the meeting of the Standing Committee in November 2012, the delegate of Turkey presented the government report, stressing that the development project was approved after undergoing all EIA procedures. Moreover, an independent evaluation of the EIA was carried out by three Professors from the Ankara University. The authorities further organised a meeting with the complainant to discuss the possible ways forward but, in the meantime, the issue had been brought before the Turkish National Court. The authorities ensured that the Turkish Ministry of Forestry and Water Affairs would be monitoring all developments related to this complaint and inform the Secretariat as soon as the Turkish Justice would emit its judgement.

The Secretariat sent a request for updated information to the Party in May 2013. In the meantime, it received a report from the complainant informing on the results of the monitoring carried out in the past two years using photo-traps. The investigation showed that Balıklı cave had been actively used by two females, two males and 1 monk seal pup that was born in the cave. Although the complainant recognised that the number of seals using the cave could be higher than the number of seals observed (only a few chambers of the cave could be monitored due to technical constraints), it seemed likely that seal activities lowered down if compared to the period before the construction.

Following the letter of the Secretariat, Turkish authorities kindly informed that the competent Ministry sent a pool of experts to the area for preparing an official report on the state of the situation.

At the meeting of the Standing Committee in December 2013, the delegate of Turkey confirmed that a final judgment on the law case before the Turkish National Court was expected soon. He informed that the report following the on-the-spot investigation confirmed that the monk seal started to use the cave again as soon as the construction in the nearby were stopped by the authorities.

The Committee decided to keep the complaint as a possible file and invited the Turkish authorities to keep the Bureau informed of any new development, including on the Court's decision.

Soon before the first Bureau meeting in 2014, the complainant spontaneously sent an updated report warning the Secretariat in particular on the fact that the construction of the marine structure didn't stop, contrary to what stated by the national authorities in December 2013.

The complainant provided dated pictures to illustrate the progress in time in the construction works. It further confirmed that even the pool of experts sent to the area by the Ministry for preparing an official report on the state of the situation witnessed the continuation of the works although the decision of the national court was still pending. The complainant informed that the marine works were almost finished. He also reported about a worrying decrease in seal activity in the cave during 2013, as shown by camera recordings in the period July 2013 and December 2013. The most disturbing information provided by the complainant concerned the death of a pup born in December 2012 in the cave, found dead on the beach near the construction site by local inhabitants. According to the complainant, the autopsy performed by authorised veterinarians at the Institute of Marine Sciences on 29<sup>th</sup> February 2014, revealed clear indications of the severe malnutrition of the new born pup.

Questioned by e-mail by the Secretariat, Turkish authorities sent a short note stating that, although the necropsy seemed to ascribe the reasons of the death to malnutrition, the scientists in charge of it requested to conduct more in-depth investigations to clarify the issue. In fact, illegal fishing could also be a reason because of two holes present on the right side of the abdomen of the pup. The authorities further informed that, in April 2014, the issue was still pending before the National Court and concluded by confirming that the construction activities were suspended in the area, but only between 1<sup>st</sup> September 2013 and 1<sup>st</sup> January 2014.

The Bureau expressed disappointment for the lack of information from the authorities on the continuation of the development works, and the apparent contradictions of previous national reports with the evidence submitted by the complainant. It therefore urged Turkish authorities to send a detailed report on the government's plans for recovering the habitat of Balikli cave, stimulating the return of the species next season, and avoiding repeating such a sad situation in future.

However, no new information reached the Secretariat by the second Bureau meeting. The Bureau decided to keep the case as a possible file, and invited the Turkish authorities to attend the Standing Committee meeting and to submit an updated report in writing addressing the questions raised by the Bureau since April 2014.

At the 34<sup>th</sup> Standing Committee meeting Turkish authorities orally informed that, as required by the ecosystem evaluation report, the company in charge of the construction of the marine terminal committed to comply with some of the recommendations included in the EIA report. For instance, it committed to suspend construction activities during the monk seal breeding season, which takes place between September and January. This commitment was apparently fulfilled. Moreover, the company worked in close cooperation with academic staff to monitor the monk seal activity. As a result, two monitoring reports covering a three-month monitoring period in the whelping season were produced. The monitoring also confirmed that the cause of the death of the young seal was related to fishing activities around the region.

The delegate also stressed that the national action plan for the protection of Mediterranean monk seal in Turkey, identifies 17 important breeding sites, 5 of which are located in Mersin province. A local action plan to be implemented over a five year period had been prepared in 2012 and revised in 2014 to ensure proper conservation of the monk seal in the area. It includes monitoring measures, a conservation programme, education and inspection programmes. The delegate also recalled that the case was still under consideration of a Turkish National Court and ensured the Parties of the highest consideration of the Ministry for this matter.

The Committee thanked the authorities for the encouraging information provided by the delegate of Turkey regarding the finalisation of an Action Plan for the monk seal in Mersin area; still, the Committee strongly regretted that, as shown by the complainant, marine infrastructures have been built in the vicinity of a fundamental reproduction and breeding zone, despite these having an obvious impact on the species.

Therefore it decided to keep this complaint as a possible file, requesting a timely and complete report on the implementation of the Action Plan and on any other measures undertaken for the conservation of the Mediterranean monk seal, as well as the conclusions of the pending Court case if available.

Finally, the Committee mandated the Bureau, in close cooperation with the Barcelona Convention, to analyse the situation of the monk seal in the East Mediterranean in light of the information received, and to prepare proposals and recommendations for the next Standing Committee.

In the report sent in March 2015 Turkish authorities confirmed that Turkey holds a fourth of the World monk seal population, half of which inhabits the Mersin Province. The report provided a very succinct presentation of the structure of the Action plan, identifying three major threats, namely: habitat loss due to tourism and road infrastructures (including in Mersin), deliberate or unintentional killing, human disturbance. The Action Plans counts with four main fields of activities including research, conservation measures, monitoring, and education.

Despite some information on activities implemented in 2014, the Secretariat considered that the measures undertaken for the implementation of the Action Plan were however insufficient to ensure adequate protection of the species in general, and in Mersin province in particular. For instance, the activities foreseen for 2015 mainly concerned research, awareness and education but little or no information was provided in the report on recovery or conservation measures.

Therefore the Bureau decided to re-consider this complaint at its next meeting as a possible file, and asked Turkish authorities to send a copy of the Action Plan (including in Turkish if the English version was not available), to be shared with the Barcelona Convention. The latter would then be requested to highlight the main gaps and suggest a set of measures that the national authorities could include in their current Action Plan for stronger and more focussed results.

Finally, the Bureau stressed that this complaint opens two issues: one is the conservation of the species at the national level; the other is the need to urgently mitigate the impact of the marine terminal on the population which was using Balikli cave in Mersin province. The Bureau requested Turkish authorities to report on this last point on time for its next meeting.

The Secretariat requested all relevant information to Turkish authorities with a deadline of 3<sup>rd</sup> July. Unfortunately, despite several reminders, the letter of the Secretariat remained unanswered. A copy of the letter was also sent to the Barcelona Convention for information but the letter didn't address any reply.

At the last Standing Committee meeting the authorities of Turkey informed about the first preliminary results of the implementation of the Action Plan for the monk seal, including in the Mersin region. The Committee further welcomed the signature of a Protocol between the authorities and the complainant, for the preparation of a study aimed to the determination of caves actively used by monk seals and the monitoring of monk seal activities in these caves. However, the Committee reiterated its concerns for one of the most threatened pinniped in the World. Bearing in mind the need to ensure co-ordination with the

Barcelona Convention, as well as to give to the complainant the opportunity for expressing its views, and taking into account the pending request of the Bureau related to the possibility of assessing the Action Plan for the monk seal, the Committee decided to keep this case-file as a possible file.

In December 2015 the Secretariat reiterated its request to the Barcelona Convention, emphasising on the demand of the Committee to receive the Barcelona Convention's own assessment of the Action Plan adopted by the authorities, as well as any other information relevant to the complaint that might be used for formulating the necessary recommendations. Moreover, the Secretariat asked whether the RAC-SPA started implementing or supervising the implementation of the Regional Strategy for the conservation of monk seals in the Mediterranean (2014-2019), and whether the latter could be useful in the context of the present complaint. Despite several reminders, the requests of the Secretariat remained unanswered.

In June 2016, as instructed by the Bureau, the Secretariat sent a letter, on behalf of the Chair of the Standing Committee to the President of the Bureau of the Contracting Parties to the Barcelona Convention. The letter informed that the Committee is interested in receiving the Barcelona Convention's eventual assessment of the Action Plan adopted by the Turkish authorities, as well as any other information relevant to the complaint, that might be used for formulating the necessary recommendations, such as the implementation of the Regional Strategy for the conservation of monk seals in the Mediterranean (2014-2019) or any independent data on the conservation status of the monk seal in Turkey and in the Mersin region. The requested information and appeal for cooperation remained unanswered so far.

At its last meeting, the Bureau of the Standing Committee reiterated the need for assessing the Action Plan for the monk seal jointly with the Barcelona Convention, which was not achieved so far much to the regret of the Bureau.

Bureau decided to keep the case as a possible file and invited the Turkish authorities to attend the Standing Committee meeting and to provide an updated report on the pending national court procedure and provide any other information they wish on conservation measures put in place for the species. The Bureau further invited that the complainant to present its opinion on the pending case-file to the Standing Committee.

No written report was received by the Turkish national authorities nor by the complainant by the date of publication of this summary.

➤ **2001/4 – Bulgaria: Motorway through the Kresna Gorge**

This complaint was submitted in 2001 by a group of Bulgarian NGOs. It concerns the alleged threat to the unique biodiversity of the Kresna Gorge in South-west Bulgaria due to a construction of a 17 km-long motorway ("Struma motorway") in the Gorge. The construction project forms part of Trans-European transport corridor No. 4 linking Dresden, Budapest, Sofia and Istanbul with an additional Sofia-Tessaloniki link. The Kresna Gorge is home to many species listed in Appendices I-II to the Bern Convention. It used to be an Emerald site before Bulgaria joined the EU in 2007.

In 2001, the Standing Committee examined the case and decided to organise an on-the-spot appraisal. It was conducted by the expert, Mr Guy Berthoud, in May-June 2002. According to the expert, the Bulgarian authorities had not considered any other alternatives to motorway construction and the construction inside the gorge was harmful to biodiversity.

In 2002, the Standing Committee decided not to open a file and to give the Bureau the opportunity to reconsider that decision if it were found that the decision regarding the route had been taken without a comprehensive, in-depth environmental impact assessment. The Committee adopted Recommendation No. 98 (2002). In particular, it was recommended to the Bulgarian Government that the decision on the routing of the motorway should be subject to an in-depth environmental assessment (paragraph 2) and that the option of enlarging the current road be abandoned and alternative routes outside the gorge be studied (paragraph 3).

In 2004, the Committee decided to open a file to stimulate the Bulgarian government to further implement Recommendation No. 98 (2002), in the absence of information on the progress of the construction project from the authorities. The Committee also considered worrying signals by NGOs that the authorities had decided to plan and construct the motorway inside the gorge before the EIA and that the construction had actually started in the northern sections without a full EIA of the motorway.

Between 2005 and 2008, the Standing Committee kept the case-file open and the Bulgarian authorities took steps to implement the Recommendation.

In 2005, the Bulgarian Ministry of Regional Development and Public Works took a decision to prepare a new detailed EIA report. By a decree of 14<sup>th</sup> November 2005, the Ministry of the Environment and Water prohibited certain activities which could have adverse consequences for the site, such as the building of hydro-electric power stations. In 2005, the Standing Committee welcomed the adoption of this decree and decided to keep the file open.

In 2006, the Bulgarian delegation informed the Standing Committee that a new EIA had been initiated, in consultation with all the partners concerned. All variants would be studied, including the proposal from NGOs, and specific requirements had been formulated. The European Union delegation informed the Standing Committee that a complaint had been lodged with the Commission concerning this project. The Standing Committee decided to keep the file open.

In 2007, Bulgaria joined the EU.

In 2007, the Bulgarian authorities informed that the EIA report was being prepared and would be publicly discussed, including by Bulgaria's High Ecological Expert Council. The Standing Committee welcomed the forthcoming finalisation of the EIA and agreed to keep the file open until the final decision on this project is taken, with positive encouragements for the Bulgarian government.

In 2008, the Bulgarian delegation informed the Standing Committee that the decision to construct the Struma Motorway had been issued after intensive consultations. The Bulgarian government had taken into account Recommendation No. 98 (2002) particularly with regard to the stages of preparation and quality of the EIA report and the determination of the motorway route in the Kresna Gorge, which was carried out with the collaboration of relevant institutions, NGOs and scientists. It was decided to avoid the Gorge.

In 2009, the Standing Committee closed the case-file, in the light of the information from the Bulgarian authorities that the decision to avoid the Kresna Gorge had been taken ("tunnel" alternative), although the final technical project for the actual road bed has not been prepared yet.

In 2010, the Bulgarian authorities informed the Standing Committee that there were no changes in the situation and no decision to construct an alternative route in the Kresna Gorge section. The representative of BirdLife asked the Bureau to continue to monitor the implementation of the recommendation.

Between 2011 and 2015, no information was submitted on the issue by the Bulgarian authorities. The issue was not raised at the Bureau or the Standing Committee either.

In September 2015, eight Bulgarian NGOs sent a signal to the Bern Convention Secretariat that the Bulgarian government planned to construct the last section of the Struma motorway through the Kresna Gorge and to reject the "tunnel" alternative chosen as a follow up to Recommendation No. 98 (2002). It was claimed that the "tunnel" alternative was a condition for the EU to fund the project. Procedures to design a new, so-called "green," alternative and to initiate a new EIA/AA (appropriate assessment) started on 19<sup>th</sup> December 2014 and 24<sup>th</sup> March 2015. On 13<sup>th</sup> May 2015, a new EIA/AA proposal was submitted to the Ministry of Environment and Waters. In 2015, the Minister of Regional Development and Public Works announced in the media on several occasions that the "tunnel" option had finally been rejected by the Bulgarian government.

The Bureau requested the Bulgarian authorities to report on the measures taken to comply with Recommendation No. 98 (2002) and to inform on any changes to the agreed plans.

On 23<sup>rd</sup> November 2015, the Bulgarian authorities informed that no decision had been taken as to an alternative solution, and that an EIA was being conducted in consultation with the public and that any decision would be taken in close cooperation with the EC. The authorities refuted the complainants' arguments as to their alleged failure to comply with Recommendation No. 98 (2002) for the lack of substantiation.

In particular, the Bulgarian authorities clarified that the "tunnel" alternative had been indeed approved by the 2008 EIA. However, studies carried afterwards revealed a number of potential problems which might occur if this alternative was implemented, such as insufficient public safety and environmental damage to the Kresna Gorge which could not be overcome by compensatory measures. Furthermore, risks related to the construction of the tunnel had been established given the seismic nature of the region, as well as high exploitation and maintenance costs which rendered the tunnel alternative economically unfeasible. Therefore, new alternatives, such as a so-called "backup" alternative, were being developed and should be evaluated through a new EIA initiated in December 2014. The "backup" alternative was designed as dual carriageway, with one carriageway closely following the existing road through the gorge and the other developing independently with tunnels and viaducts. Its construction would take 3-3.5 years. The "backup" design intended to minimise the footprint of the road and reduce impacts on habitats and species. The "backup" alternative differed from the "green" alternative, which had been evaluated under an EIA of 2007 [document T-PVS/Files (2015) 59].

In December 2015, the Standing Committee decided to **consider this closed file as a possible file** at its next meeting, and invited the Bulgarian authorities to keep the Bureau informed of any relevant development. The Committee also took note of statements by Switzerland, the Czech Republic and Iceland in support of the complainant's request to open a case-file with a view to ensuring that the project did not jeopardise the scope and aims of Recommendation No. 98 (2002) and the ecological interest of the area. It also took note of the EU delegate's views that a final decision as to the route had not been taken and information that the EC was following project developments and would intervene in case of possible non-compliance with EU legislation.

On 23<sup>rd</sup> February 2016, the Bulgarian authorities submitted that the design of Lot 3.2 featuring a long tunnel through the Kresna Gorge was completed and approved in early 2015. A detailed EIA/AA, comparing the long dual tunnel and the dual carriageway alternatives, would be prepared in 2016. A design contract for the dual carriageway alternative was approved in late December 2015.

The Bulgarian authorities further specified details of Lot 3.2 EIA procedure, which had been initiated in December 2014 by the National Company Strategic Infrastructure Projects ("NCSIP", the project developer). In November-December 2015, the NCSIP conducted public consultations on the scope and contents of the EIA report. The EIA scoping document was subsequently amended and forwarded to JASPERS for comments. On 14<sup>th</sup> January 2016, JASPERS provided comments which were integrated in a joint working document (see Appendix I). The document was forwarded to the EC DG Environment (DG-ENV) and DG Regional and Urban Policy (DG REG) for information and feedback. It will be subsequently reviewed by the Ministry of Environment and Water.

Furthermore, the Bulgarian authorities provided a "[Multi-Criteria Analysis of Struma Motorway Lot 3.2](#)" ("MCA", see Appendix II), covering the development of the Struma Motorway project since 2000 and comparing 16 project alternatives through a comprehensive environmental methodology ("[Methodology for Environmental Comparison of Alternatives of Road Projects.](#)" see Appendix III). The MCA was prepared in consultation with the EC, JASPERS and local NGOs and made available for review by DF REGIO, DG ENV and JASPERS on 3<sup>rd</sup> February 2016.

The Bulgarian authorities submitted that the Struma Motorway project had been under continuous public scrutiny, through discussions, the Struma Motorway monitoring committee, consultations with the affected communities and the website: <http://ncsip.bg/en/index.php?id=48> .



On 26<sup>th</sup> February 2016, the complainant submitted that the revised scope of the new 2015 EIA had been submitted for final approval to the Ministry of the Environment and Water on 24<sup>th</sup> February 2016. The revised scope of the new EIA includes two dual carriageway alternatives. Both alternatives foresee building a new carriageway to ensure movement in two directions, which runs counter to Recommendation No. 98 (2002), the 2008 EIA and the 2007 AA. According to the complainant, the authorities wish to conceal this fact by claiming that the alternatives have not been assessed by an EIA. The 2015 EIA/AA should be finalised by the end of March 2016.

The complainant further submitted that the construction of the motorway sections Lot 3.1 from the north and Lot 3.3 from the south of the Kresna Gorge had already begun. Hence any alternatives bypassing the Gorge are excluded. The “tunnel” remains the only alternative in line with Recommendation No. 98 (2002).

The complainant informed about the outcome of liaison with the EC. On 14<sup>th</sup> January 2016, the complainant attended a meeting with the EC DG-ENV in Sofia. The DG-Environment commented in particular that the implementation of the motorway project relied on the competent national authorities rather than the Bern Convention and that the EU law prevailed over the Bern Convention. According to the complainant, the DG-ENV refused to cease funding for the project or to start an infringement procedure.

On 26<sup>th</sup> January 2016, the EC DG-REG responded to the complainant’s query that the EC had been informed that the authorities were exploring alternatives to the “tunnel” option and saw no reason to prevent them from doing so. An official application for funding was a prerequisite for EU co-funding, whereas the EC had not received such an application from the Bulgarian authorities concerning Lot 3 of the Struma motorway. The EC has been following the development of the entire motorway. According to the complainant, the EC refuses to take action to prevent negative environmental impacts in the Kresna Gorge.

The complainant requested that the Bureau re-open the case-file in order to assist Bulgaria to fulfill its obligations to protect the Kresna Gorge.

In the light of the information from both sides, in March 2016 the Bureau decided to reconsider this complaint at its next meeting as a possible file. It requested the Government and the complainant to report, including on the functioning of the tunnel.

The Bureau expressed hope that the Bulgarian authorities would be able to provide information demonstrating that the risks to the wildlife have been minimised.

On the 14<sup>th</sup> July 2016, the Bulgarian authorities submitted their report, summarising the progress of the environmental procedures and project development since the previous reports from November 2015 and February 2016.

The report informs that as part of the continuing efforts of the authorities to find the optimal solution for the project, a completely new eastern alternative was formulated in April-June 2016. This new alternative will be evaluated together with the previous alternatives as part of the new formal EIA procedure which began in 2014.

The report stresses that the preferred solution for the project must not only comply with a set of environmental, technical and economic requirements, but must also be completed by the end of the Programming period (Programme Transport and Transport Infrastructure 2014-2020).

The national authorities argue that any delays in the implementation of the project would result in the loss of additional human lives. The report emphasises that the current road is very dangerous and causes many accidents, as overtaking slower vehicles is possible at very few places. The report furthermore describes the existing road as a threat to biodiversity as it acts as a barrier: many species are unable to cross it, and many animals which try to cross are killed by passing vehicles.

In March 2016 the Ministry of Environment and Water issued specific requirements and recommendations related to the scope and content of the EIA report, in line with the general recommendations of DG-ENV received at meetings in March and May 2016.

As of July 2016 the EIA scoping document is being revised to take into account the instructions received by the Ministry, various recommendations from third parties and to provide for the evaluation of the newly developed eastern alternative. Once the revision is completed the scope and content of the EIA report will once again be subject to formal public consultations.

The report states that all necessary mitigation and, if necessary, compensation measures will be adopted to maintain the ecological value of the area.

The report concludes by assuring that Struma Motorway Lot 3.2 in Kresna Gorge is not in construction. Construction may commence only after an alternative has been selected as part of the EIA/AA process and an EIA decision has been issued. Furthermore, funding for the project must be approved before signature of construction contracts.

On 15<sup>th</sup> July 2016, the complainant sent a report, asking the Bureau to recommend to the Standing Committee to re-open the case file.

The complainant argues that the new alternative proposed by the Bulgarian authorities is not in compliance with the Recommendations No. 98 (2002). This new project was presented during the 15<sup>th</sup> meeting of the Struma motorway Monitoring Committee on 4<sup>th</sup> July 2016.

The report states that the abandonment of the long tunnel option, considered as the preferable one by the 2008 EIA decision, is based on false arguments. Firstly, the report argues that the construction price and the costs for running the tunnel are overestimated. The uranium presence on the route of the tunnel is also considered as overestimated. Secondly, the construction of the tunnel would still be possible before the 2020 deadline. Thirdly, the report claims that the alternative options defended by the Government are much more prejudicial to the environment than the tunnel option.

The complainants further consider that contrary to what is said by the Government, the tunnel option presents fewer risks related to seismic and draining of ground waters. They reject the geological study presented by the Government, questioning its scientific validity with arguments. The complainants ask for an independent thorough geological, geotechnical and engineering assessment of the long tunnel option.

The report informs that the new EIA procedure for Lot 3.2 has been delayed because from 7<sup>th</sup> April 2016 the responsibility of managing the project was transferred to the Road Executive Agency from the National Company "Strategic Infrastructure Projects".

The complainants regret the difficulty to obtain public information, as they need to go into court to have access to crucial documents. The report finally reminds that the construction of the motorway sections Lot. 3.1 and Lot 3.3 had already begun, and informs that land acquisition around Lot 3.2 (section which passes through the Kresna Gorge) have already been started by authorities. According to them, these pieces of information raise doubt concerning the reality of the exploration of alternative roads and the abandonment of the original contested project.

In October 2016, the national authorities sent an updated report, as requested, for the 36<sup>th</sup> meeting of the Standing Committee. They provide clear and concise information on all measures implemented up to date to ensure compliance with the operational part of Recommendation No. 98 (2002). The authorities reiterate that a substantial number of alternatives aiming to take the motorway out of the Gorge are currently considered (including a dual carriageway alternative and the newest Eastern Bypass Alternative presented at the beginning of 2016) by the EIA/AA report.

They further inform on the process of preparation of the scope and content of the EIA/AA report and explain that in September 2016 the Road Infrastructure Agency (who took over the development of the project from the National Company Strategic Infrastructure Projects) launched a public consultation on the new scope of the EIA report. The final results of the EIA study are expected by the end of the year.

In an updated report submitted for the 36<sup>th</sup> meeting of the Committee, the Bulgarian Society for the Protection of Birds (BSPB) presents its position to the public consultation launched by the authorities on the new scope of the EIA report. They argue that the scope of the current EIA/AA is not in accordance with a previous decision of the Ministry of Environment, nor with the commitments made by the authorities before international institutions, including the one funding the infrastructure project. Therefore, they argue that any alternative that is still studied should necessarily present a passage for LOT 3.2 outside the gorge as this was the reason why the Standing Committee to the Convention decided to close the file in 2008.

They further inform on their problems in accessing the necessary reports and studies which present concerns of the designers of significant impacts and risks in the construction of some tunnel options. They also conclude by making proposals on the scope of the current EIA/AA assessment.

An updated report was also received for the 36<sup>th</sup> meeting of the Standing Committee from the coalition of nine organisations/institutions which have submitted the signal to the Convention in 2015. They also argue that the Standing Committee to the Convention should consider opening a new file against Bulgaria, considering that the new alternatives currently being studied do not comply with Recommendation No. 98 (2002). They present a statement signed by 99 scientists of the National Museum of Natural History of the Bulgarian Academy of Science and many Bulgarian Universities and NGOs which is appended to their report.

The complainants further expose on the public campaigns of the Government, aiming to justify the environmental alternative with timeframe and financial arguments.

Eventually, other stakeholders have also submitted a declaration presenting their observations on the possible case-file for the attention of the 36<sup>th</sup> meeting of the Standing Committee. The declaration is signed by a number of Professors and Engineers from different Bulgarian Universities and sent to the Secretariat by the Bulgarian Construction Chamber, at the origin of the organisation of a discussion forum on "Progress of the Struma project, Lot 3.2 in the section Krupnik to Kresna".

The co-signatories of the declaration express their disapproval of the behaviors of some environmental NGOs and argue that their conclusions sent to the European institutions and the Bern Convention are manipulative, including because they comment on technical, geological, seismo-tectonic, hydrological and financial issues concerning the project alternatives while they are not competent on these.

### ➤ **2012/3 - Possible spread of the American mink (*Neovison vison*) in Poland**

This complaint was submitted in 2012 by a Polish citizen claiming that the American mink (*Neovison vison*) had not been included in the list of non-native plants and animals that might endanger native species. Since the species is farmed in Poland and it is also present in the wild, the complainant requested its inclusion in the specific regulation published on 9<sup>th</sup> September 2011, particularly because of its known effects on native fauna.

The government replied to the above allegations explaining that, although the Ministry of Environment had proposed the species to be in the list, the Ministry of Agriculture opposed its inclusion as it considered the American mink as a farm animal that should not be affected by regulations such as prohibition of import or other controls on alien species. The Ministry further affirmed that the risk of escape was relatively low, as there were no incidents reported at that time.

At its meeting in September 2012 the Bureau noted that, although apparently the species had not spread yet in Poland, inaction from Parties could eventually lead to a possible breach of the Convention, particularly because the risk of escape of the American mink into the wild is high, and several European countries had already been confronted to this situation.

The Bureau decided to re-consider this complaint as a complaint on stand-by at its first meeting in 2013 and instructed the Secretariat to contact Polish authorities for an updated report. However the Secretariat didn't receive a reply to its reporting request and thus the complaint couldn't be properly assessed at that time. Nevertheless, in June 2013, the complainant sent a short update accompanied by a scientific publication showing that the American mink in Poland presents high genetic diversity and originates from different source population of their native range. According to the article, the colonisation was triggered by numerous escapees from farms, as well as by immigrants from Belarus.

The complainant also contested the authorities' statement according to which "in Poland the American mink is a farm animal and thus cannot be classified as IAS". In fact, the complainant provided the example of the sika deer (*Cervus nippon*), which is listed both in the farm animal, IAS and game lists.

In September 2013, the Bureau decided to change the status of the complaint and to forward it to the Committee as a possible file because its reiterated reporting requests to the authorities remained unanswered. It was later discovered that, because of the appointment in Poland of a new focal point for the Bern Convention, none of the reporting requests addressed to the Party were received.

At the meeting of the Standing Committee in December 2013, the delegate of Poland provided further information on the Polish population of wild American mink, as well as on the measures implemented for its eradication, including those to prevent escapes into the wild. An audit was also conducted, with the objective of assessing the effectiveness of the State supervision on the running of fur farms. The delegate of Poland was pleased to announce that, taking into account the results of the audit, the Minister of the Environment decided to amend the Regulation on the list of non-native plants and animal species that might endanger native species or natural habitats in order to include the American mink into its Annex I. In December 2013, the draft amendments to the Regulation and its Annex were under preparation. The Committee decided to keep the complaint under scrutiny as a possible file, until the amendments to the Regulation are notified to the Secretariat and the Bureau.

Unfortunately, in June 2014 the Minister of Environment informed that – after consultations and negotiations with the Minister of Agriculture and Rural Development, the authorities decided to withdraw the proposal of listing the American mink as a dangerous non-native animal. The reasons for this change were: i) the commitment of the Minister of Agriculture and Rural Development to improve the standards for the American mink operational farms in Poland, including animal breeding conditions; ii) an Ordinance of the Council of Ministers which makes the EIA mandatory for mink farms of minimum stocking density.

Moreover, the authorities claimed that there is no provision in the Bern Convention obliging the Parties to include invasive species into the national lists and considered that there were high possibilities that the species would be anyway included in the future list of invasive species of EU concern. The Secretariat noted however that Article 11, paragraph 2 b) of the Convention commits states to strictly control the introduction of non-native species.

The Standing Committee, at its 34<sup>th</sup> meeting, took note of the information provided by Polish authorities on the measures undertaken to secure native species and to improve the legal provisions on American mink's farms in respect to EIA procedures. The Committee also noted that Poland was looking forward to the possible inclusion of the American mink in the list of Invasive Alien Species of EU concern. It thus asked the country to keep it informed about the delivery of the list of IAS of EU concern at its next meeting.

At the 35<sup>th</sup> Standing Committee meeting the national authorities informed on the first implementation of the measures adopted to control and prevent the escape of American minks from mink farms. Poland also recognised that the species is present in the wild, but stressed – supported by other Parties – that this situation is common to many other countries. Following the discussion held, the Committee decided to keep the case as a possible file, and invited the authorities to report on the control of the American mink to the select Group of Experts on invasive alien species for advice, prior to the presentation a full report at next Standing Committee meeting.

In their latest updated report, the Polish authorities informed on the latest and on-going legislative reforms aimed at amending the conditions for keeping livestock species so to bring these in conformity with European nature protection standards, as well as fixing additional requirements to minimise the risk of escapes of American mink from farms to the wild.

Some draft amendments will also slow down the threshold which is used for qualification of a mink farm to the group of projects that are potentially likely to have a significant impact on the environment. Once the amendment adopted, any increase of the stock above the foreseen threshold will be subject to a decision based on environmental conditions. It will be further possible to set environmental conditions and requirements, including safety measures to prevent mink escapes from farms, in every decision on the environmental conditions, irrespectively of a procedure under which the decision will be issued (so far this is not possible for instance when there is no EIA obligation).

The meeting of the Select Group of Experts on invasive alien species took place in Rome on 31<sup>st</sup> March – 1<sup>st</sup> April 2016. A draft Recommendation on the control of American mink (*Neovison vison*) in Europe will be presented to the Standing Committee for examination and possible adoption.

### **1.3 Follow-up of previous Recommendations**

#### **➤ Recommendation No. 175 (2015) on the monitoring of the agreement concluded in the frame of complaint n° 2013/5**

At its 35<sup>th</sup> meeting, the Standing Committee adopted Recommendation No. 175 (2015) on the monitoring of the agreement concluded in the frame of complaint n° 2013/5 (File closed No. 2013/5: Presumed impact of a construction of Overhead Power Line (OHL) in an environmentally sensitive area in the Lithuanian-Polish borderland) and invited Lithuanian authorities to inform the Bureau of its implementation.

Both the Contracting Party and the complainant sent reports to the Bureau for its second annual meeting in 2016. The Bureau agreed that progress in the implementation of the Recommendation should be presented to the Committee as well, as it is the first time that a Recommendation has been adopted following a mediation procedure.

#### **➤ Recommendation No. 169 (2013) on the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)**

This Recommendation was adopted by the Standing Committee as a follow-up to a complaint which is still on stand-by [No. 2011/5: France / Switzerland: threats to the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)].

In 2015, at its 35<sup>th</sup> meeting, the Committee acknowledged the reports submitted by the authorities of Switzerland and France. Parties were unable to make their oral presentations due to time constraints. The Committee agreed to append the written statements delivered to the Secretariat to the report of the 35<sup>th</sup> meeting. Finally, the Committee invited the Parties and the NGOs to report on progress at its 36<sup>th</sup> meeting.

#### **➤ Recommendation No. 96 (2002) on conservation of natural habitats and wildlife, especially birds, in afforestation of lowland in Iceland**

This Recommendation was adopted in 2002 after an on-the-spot appraisal held in the frame of a case-file before the Convention [2001/5: Exotic Forest plantations, Iceland].

A joint on-the spot appraisal of the Bern Convention and AEWA took place in the period 23-27 May 2016, with the objective, among others, to assess the implementation of the above Recommendation. The preliminary results of the mission were communicated orally to the Bureau members as the mission report was not yet finalised by the independent experts charged with its preparation.

A new set of recommendations to Iceland, which are proposed to supersede those of the current Recommendation No. 96 (2002), are presented for examination and possible approval by the Standing Committee. The mission report will also be presented to the Committee by the expert in charge of the mission.

➤ **Recommendation No. 144 (2009) on the wind park in Smøla (Norway) and other wind farm developments in Norway**

This Recommendation was adopted in 2009 in the frame of a case-file [2001/2: Windfarms in the Smøla Archipelago].

On the decision of the Standing Committee itself, monitoring of the implementation of this Recommendation should be resumed at its 36<sup>th</sup> meeting. Both the authorities and the NGOs were invited to report on the status of the implementation of each of the 10 operational paragraphs of the Recommendation to the Standing Committee.