

Strasbourg, 20 August 2014
[Inf14e_2014.doc]

T-PVS/Inf (2014) 14

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

34th meeting
Strasbourg, 2-5 December 2014

- INFORMATION NOTE
ON THE FOLLOW-UP TO BE GIVEN TO THE
"BYSTROE ESTUARY CASE-FILE" AND POSSIBLE
SCENARIOS -

*Information note prepared by
the Directorate of Democratic Governance*

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1. INTRODUCTION

At its meeting held on 4 April 2014, the Bureau of the Standing Committee to the Bern Convention assessed again complaint n° 2004/1 on Proposed navigable waterway in the Bystroe Estuary (Danube delta), Ukraine.

After a thorough analysis of the latest available information, the Bureau considered that, in dealing with this case-file over the past ten years, the governing institutions of the Convention had perhaps reached their limits. The different views of the two main concerned Parties regarding the possible negative impact on the ecosystem of the works so far carried out, as well as the diverging positions regarding the status of implementation of the Phase II of the development project were still considered to be a major obstacle to the identification of a satisfactory solution of the case, despite the latest progress made by the Parties on transboundary cooperation.

The Bureau decided to keep the case-file open and to re-assess it at its next meeting, but instructed the Secretariat to prepare a short note about how the Convention has dealt in the past with similar case-files. The note should also present possible scenarios for handling the present one at the next Committee meeting. **The Bureau will then prepare an opinion with a draft decision to be submitted to the delegates of the Bern Convention at the 34th meeting of the Standing Committee.**

Therefore the present note will concentrate on providing a short reminder of the procedure set-up for dealing with case-files, as well as factual information regarding complaint n° 1986/8 on *Caretta caretta* in Laganas Bay, Greece, which was closed because the Standing Committee considered that it had fulfilled its obligations under Article 18§1 of the Convention. It will then provide an overview of the options that the Standing Committee has, regarding the present complaint.

2. THE CASE-FILE SYSTEM: AIM AND PURPOSE

The principle of a case-file system has been introduced within the Convention already in 1984 [document T-PVS(84) 20] as a tool for giving substance to the provisions of Article 14§1 according to which the Standing Committee shall be responsible for following the application of the Convention through making recommendations on measures to be taken for the purposes of the Convention, keeping under review the provisions of the Convention and making proposals for improving the effectiveness of the Convention.

The system has been conceived to enable a peer-to-peer monitoring of the Convention by Parties, and promote co-operation at the international level. In fact, the Standing Committee remains free to decide the solution in each case, without being constraint by strict obligations that may be a burden for the smooth co-operation among Contracting Parties. The system is also a tool for the implementation of Article 18(1) of the Convention, which states that “*The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise*”.

The practice shows that the case-file system does also promote the active and democratic participation of the civil society, NGOs, research and academia in the monitoring of the implementation of the obligations arising from the Convention, as well as –to a certain extent- in the decision-making process relating to biodiversity conservation.

While the case-file system started to run on a provisional basis, in 1995 the Committee decided to adopt a specific procedure for dealing with case-files. This can be found in document [T-PVS \(95\) 12](#). Since then, the procedure has been subject to a thorough analysis and slightly revised accordingly¹ [see

¹ **Main amendments:** introduction of the on-line complaint form and of the Register of case-files; introduction of the « Summary of case-files ».

document [TPVS\(2008\) 07](#)], to be able to take into account the lessons learned through the experience, and in an attempt to facilitate a quicker screening of complaints and to expedite their possible settlement.

The analysis of the system also highlighted that its success relies more on the will of the Parties to collaborate than on the rules applied.

In 2013, specific [Rules of Procedure](#) for Environmental Mediation have also been adopted.

Once lodged, complaints undergo through several stages:

- **Stand-by:** these are complaints that have been pre-screened and declared formally admissible by the Secretariat, and are examined by the Bureau. They may involve a presumed breach of the Convention but the Bureau needs more information or time to understand if they really deserve the international attention given by the Standing Committee. In other cases, the Bureau may decide to keep on stand-by those complaints which present clear grounds for a smooth and satisfactory solution through co-operation and which do not concern threatened species or habitats.
- **Possible files:** these are complaints which the Bureau sends to the Standing Committee for assessment and which have not been formally opened. The seriousness of the issues at stake and the evidence of a possible breach of the Convention call for the attention of the Standing Committee which will decide on the follow-up to be given to the complaint.
- **Open files:** These are the complaints which deserve a special attention from the Standing Committee, mainly because (i) of a breach of the Convention's provisions, (ii) of the interest of the site/species concerned, (iii) of the scope of the threat, (iv) of the urgency of the situation.

2.1 Measures that may be taken regarding complaints:

- Requests for reports to gather more information in order to take a decision, to be presented either to the following Bureau meeting or to the next Standing Committee meeting.
- Request for an on-the-spot appraisal, with the agreement of the Party concerned (see Rules of procedure of the Standing Committee), when the situation is not sufficiently clear.
- Adoption of a specific Recommendation on the matter, whose implementation by the concerned Party(ies) will be followed-up afterwards, until the difficulties are resolved.

2.2 Closure of files

According to the procedure adopted by the Standing Committee ([see n° 10](#)):

“If, after it has examined the report made by an expert following an on-the-spot enquiry or the report forwarded by the Contracting Party concerned as part of the follow-up to a specific recommendation, the Standing Committee finds that the difficulties relating to implementation of the Convention have been resolved, it decides by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8.b of the Rules of Procedure, to close the file”.

In 1993 the Standing Committee considered that the decision to close a file would be taken when the difficulties to implement the Convention have been solved, whether the file had been opened or not.

Although this has been the case for most files, the practice has brought the Standing Committee to decide the closure of files also under other circumstances, in two cases, as soon as they were brought to the attention of the European Court of Justice (ECJ).

Even if the Standing Committee has so far agreed that the fact that an infringement procedure is opened by the European Commission does not hinder the development of a case under the Convention, the submission of the same matter to the ECJ has been among the reasons quoted for justifying the

closure of the files on the *Caretta caretta* in the Laganas Bay, Greece (complaint n° 1986/8), as well as on the Santoña Marshes, Spain (complaint n° 1987/3).

The Santoña Marshes case has been under assessment as a file for only two years. In fact, the lack of complainant, as well as the lack of information from the concerned Party (mainly due to the distribution of powers among regional authorities) pushed the Committee to close it as soon as it was submitted to the ECJ, and to continue the monitoring through the analysis of the biennial reports (Article 9 of the Convention).

The Laganas Bay complaint will be presented with more details in the next section of the present document.

Both cases had in common failures in the co-operation needed for the efficiency of the case-file system.

3. THE “ZAKYNTHOS” CASE-FILE: COMPLAINT N° 1986/8 ON *CARETTA CARETTA* IN LAGANAS BAY, GREECE

In 1986 MEDASSET lodged a complaint denouncing tourist developments in Laganas bay (Zakynthos island, Greece), a bay of particular importance for the nesting of the already threatened marine turtle *Caretta caretta* (Appendix II to the Convention).

The complaint was systematically screened by the Standing Committee for thirteen years, until its 19th meeting, in 1999 when the file was finally closed. During the long period of assessment, the Standing Committee entrusted and examined a series of experts' reports, as well as the reports of the Secretariat's field visits to the area, the information addressed by the government, the documentation submitted by the complainants and other NGOs. Moreover, the matter was on the agenda of the Group of Experts on the Conservation of Amphibians and Reptiles, which was requested to monitor the conservation status and trends of the *Caretta caretta* in the area object of the complaint.

The first important decision taken by the Standing Committee on the complaint was the adoption of [Recommendation No. 9 \(1987\) on the protection of *Caretta Caretta* in Laganas bay, Zakynthos](#) (Greece), addressing a series of urgent recommended actions to the Greek government. A second, more general Recommendation was adopted the same year under the reference: [Recommendation n° 7 \(1987\) on the protection of marine turtles and their habitat](#).

After several years devoted to the monitoring of the implementation of the Recommendations, the Committee adopted, in 1994, an important Decision urging Greece to implement without delay a number of conservation measures, as well as stating that “*failure of Greece to comply with them would be understood by the Committee as a grave and repeated breach of its obligations under the Convention and as an encouragement to Parties to proceed according to Article 18 paragraphs 2 to 5 of the Convention*”.

At its 14th meeting (March 1995), the Committee took note of the firm intention expressed by the Greek government to provide adequate protection on the nesting beaches in Laganas Bay, to destroy the illegal constructions in the Dafni beach area, and to create the Zakynthos National Marine Park in the region in question.

However, several delegates drawn attention to the fact that the situation in the field had not at all improved since the opening of the file, and that **the credibility of the Convention had been called into question because of the lack of any solution to this issue**. They considered that the Standing Committee had tried its utmost in this respect, over many long years, with very few tangible results, with the outcome that it was necessary for the Standing Committee to adopt a firm stance at the Meeting over the issue in question.

After the debate, the Committee opted for a more indulgent approach but adopted however a decision urging Greece to implement without delays the previous recommendations and decisions, and namely to urgently demolish the illegal buildings surrounding the Dafni beach and Laganas Bay, to fully implement Recommendation No. 9 (1987) and to create within three years the planned National Park in Laganas Bay. It again declared that failure of Greece to comply with any of these conditions would be understood by the Committee as a grave and repeated breach of its obligations under the Convention and as an encouragement to Parties to proceed according to Article 18, paragraphs 2 to 5, of the Convention.

At its 15th meeting (January 1996) the Standing Committee found that Greece had achieved only limited progress. It continued to be very concerned that not all obligations of the decision of 24 March 1995 had been fulfilled satisfactorily. Therefore the Committee decided to finance an assessment of the legal situation regarding this problem in Greece, in view of making proposals for a satisfactory outcome.

The expert's report was screened at the 16th Standing Committee meeting (December 1996) and the Committee expressed again regret for the delay in the implementation of protection measures and reminded Greece that according to its Decision of 24 March 1995 the natural marine park planned had to be created before 25 March 1998. The Committee requested Greece to present a report on the progress towards the creation of the National Marine Park at its 17th meeting.

However, at its 17th meeting the Committee had to reiterate its concern and again urge the Greek government to implement measures for the establishment of the Zakynthos National Marine Park and to fully implement its Decision adopted on 24 March 1995.

Moreover, the complainant informed the Secretariat that it had presented a complaint to the European Union Ombudsman claiming a presumed lack of appropriate action by the European Commission.

At the 18th Standing Committee meeting (1998) the delegate of the European Union ensured the Committee of the importance attached by the European Commission to the case, and informed that the matter was being examined in the light of non-compliance with the obligations of Greece under the EU relevant Directives.

While a number of delegates supported again the closure of the file, the Committee finally agreed on the suggestion of the Chair to keep the file open for another year and to close it if the case was finally sent to the European Court of Justice. **In that case, it would be preferable to avoid duplication of work.**

The closure of the file was decided in 1999, at the 19th Standing Committee meeting. The European Union informed that the Commission had opened an infringement procedure against Greece and that the case would go to the European Court of Justice. Moreover, European Structural Funds had been blocked in the area for lack of conformity with European legislation.

After the debate was closed, the Committee received the information from the Greek delegation that the Presidential Decree for the establishment of the Zakynthos National Marine Park had been finally signed by the Head of the State, an information that was welcomed by the Committee.

The Committee decided however that it had discussed enough the file in 14 meetings and adopted the "*Decision on the lack of appropriate conservation measures of Laganas bay, Zakynthos, Greece*" which stated the Committee's concern for the credibility of the Convention, and declared that Greece ***failed to comply with the conditions set-up in its Decisions of 24 March 1995***, while the Committee fulfilled more than sufficiently its obligations under Article 18, paragraph 1, of the Convention. Moreover, it is important to note that, in its decision to close the file, the Standing Committee reminded that Article 18§2 allows Parties to submit for arbitration "*any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled (...)*" on the basis of the best endeavours of the Standing Committee to facilitate a friendly settlement. However, none of the Parties requested arbitration in the case of the Zakynthos file.

The decision is appended to this document.

The report of the 19th Standing Committee meeting is available [here](#).

4. SHORT ANALYSIS OF THE LAGANAS BAY DECISION

The submission of the case to the ECJ was considered to be among the justifications for the closure of the file. This appears from the discussions held during the Standing Committee's meetings since 1995, and it is reflected in the introductory part of the decision adopted to close the file.

However, it is important to note that the submission of a case to the European Court of Justice does not seem to be *per se* a sufficient reason for the Committee to close case-files. For instance, in the case of complaint n° 1998/3 on the *Survival of the common hamster in Alsace, France*, the Committee decided to keep the case-file open after the case was brought in front of the European Court of Justice, and even after the issuing of the decision condemning France, as a way to encourage the Party to implement the judgment of the ECJ. The efforts of France for improving the conservation status of the species, and its continuous cooperation with the Institutions of the Convention certainly influenced the decision of the Committee which felt that keeping the file open would be an efficient way to *find a satisfactory solution to the problems encountered in implementing the Convention*².

The Decision adopted in the case of Laganas Bay puts an emphasis on the time dedicated, without success, by the Committee to the complaint (*“Noting that the Committee has discussed this case 13 times since 1986, without substantial positive results”*), and evokes the failure to *“find so far an acceptable balance between development and conservation in this case”*.

Moreover, the Decision enumerates the disposals adopted by the Standing Committee which have been disregarded by Greece and recalls the possibility given to Parties by Article 18 to request the settlement of disputes through arbitration.

The risks for the credibility of the Convention do also appear to be a frequent concern for the Committee and are mentioned both in the Decision and in the Standing Committee's meetings reports. The duplication of work is another, although less recurrent, concern.

Formally, the Standing Committee *“Declares that in the present case Greece has failed to comply with the conditions set up in its Decision of 24 March 1995”*, and *“decides that in the 13 years it has discussed this case, the Committee has fulfilled more than sufficiently its obligations under Article 18, paragraph 1, of the Convention”*.

Therefore, formally, the Committee closed the file based on two grounds:

1: because of the failure of Greece to comply with the decisions and recommendations addressed by the Standing Committee for enabling the correct implementation of the Convention by the Party (Articles 4 and 6 of the Convention are also quoted in the Decision); and

2: because the Committee considered having fulfilled its obligations.

Regarding the first ground of the decision, the Committee clearly mentions only the lack of compliance with the conditions set-up in its Decision of 24 March 1995, but in fact the title of the Decision of closure, the arguments evoked in its preamble, and the content of the Decision of 24 March 1995 which has been violated³ lead to conclude that the breach of a decision aimed at ensuring the implementation of the Convention involves automatically a breach of the Convention.

² Quote from the Procedure for the Opening and Closing of Files ;

³ *«(...) the failure of Greece to comply with any of these conditions will be understood by the Committee as a grave and repeated breach of its obligations under the Convention (...)”*

Regarding the second ground of the Decision, the Committee recognises its inability to find a satisfactory solution. Although not clearly stated in the Decision itself, the lack of cooperation from the Party at that time was often quoted as being an important part of the problem.

The last consideration concerns an event which has been determinant to move the complaint a step forward, i.e. the intervention of the European Union. The opening of the infringement procedure and the threat of a subsequent ruling of the ECJ have undoubtedly contributed to step-up efforts for the creation of the National Marine Park. However, it should be noted that the dynamic mentioned here derived from the reaction of the complainant which presented a complaint to the European Union Ombudsman based on the allocation of EU structural funds to projects which were detrimental to the proper conservation of the protected species.

5. WHAT ARE THE FORMAL OPTIONS OF THE STANDING COMMITTEE IN THE BYSTROE CASE-FILE

In light of the above and bearing in mind the procedure for dealing with the case-files under the Convention, the Standing Committee can consider the following options:

a) Keeping the case file open.

Challenges: the credibility of the Convention is already at stake in the present case-file and the long history of this complaint has proved that progress has not been constant, co-operation of the concerned Parties has not been always excellent, evidence-base information has often lacked, and the probability of reaching a satisfactory solution in a short period of time is not high. Moreover, the concerned Parties couldn't agree on the setting-up of a Select Group of Experts to facilitate dialogue, a decision which reduces the Committee's room for action. Furthermore, the matters in question have been already archived by the Ramsar Convention. The question to be answered here is: What can still be achieved if the file remains open?

Advantages: the situation is monitored now by the ESPOO Convention and the fact that the file remains open under the Bern Convention may encourage the concerned Parties to continue the recently established cooperation through the work of the Joint Commission.

b) Closing the file with a declaration of failure to comply with the decisions and recommendations of the Standing Committee, or – where appropriate – more clearly with Articles 1, 4 and 6 of the Convention in the present file. The Committee may 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.

This solution would address and solve the challenges identified under a). It should be further noticed that the Standing Committee has the possibility of re-opening closed files whenever appropriate.

However, the closure of the file without any follow-up may put at risk the dynamic of co-operation recently initiated under the Joint Commission.

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, as well as that their specific needs and views are properly taken into account. The Joint Commission could be called to report to the Standing Committee on an annual basis.

This solution would address both the advantages and the challenges identified under a), but would be somehow experimental and its success would depend on the readiness of the concerned Parties to a genuine cooperation.

6. REMINDER OF THE MAIN DECISIONS OF THE STANDING COMMITTEE ON THE BYSTROE ESTUARY CASE FILE

2004: The NGO platform "Danube Environment Forum" submitted a complaint denouncing the possible ecological risks of a project concerning a navigable waterway in Bystroe estuary of the Danube delta in Ukraine. Given the European importance of the site the Bureau reacted immediately proposing to the Ukrainian government an on-the-spot appraisal, which was finally carried out in July.

The expert's report stressed the ecological significance of the wetland, the unavailability of some EIA and the important potential effects that the project could have on the biological values of the whole delta. The Standing Committee, at its 24th meeting, examined and adopted [Recommendation No. 111 \(2004\) on the proposed navigable waterway through the Bystroe Estuary](#), and decided to open of a case-file.

The Committee requested the Committee of Ministers of the Council of Europe to *"be informed of the recommendation and ensure, by whatever means are more appropriate, of the follow-up of the implementation of the recommendation, creating a space of dialogue among the interested States, international organisations and NGOs"*⁴.

2005: The Committee of Ministers of the Council of Europe invited the Standing Committee to promote platforms of dialogue open to the States concerned and relevant international organisations with the aim of fostering dialogue on the preservation and sustainable development of the area, participating in the ecological monitoring of the Danube, promoting a strategic assessment of the delta and carrying out the follow-up of the Recommendation.

Ukraine informed that dredging in the delta had been stopped in August and the Environmental Impact Assessment (EIA) was being revised to make it more complete and exhaustive. Monitoring was being strengthened and a strategic assessment of the whole area was planned. The Agreement on the protection of the Danube delta, concluded in the framework of the Council of Europe was to be ratified in the coming weeks.

The Committee noted the progress reported by Ukraine on the implementation of Recommendation No. 111 (2004) and congratulated Ukraine and the Secretariats of international conventions for following-up the issue and collaborating tightly. On the proposal of Ukraine, the file was kept open.

2006: The Inquiry Commission under the Espoo Convention, involved in the analysis of the Bystroe project, had concluded that significant adverse transboundary impacts of the project were likely.

Ukraine had signed the Agreement for the creation and management of a cross-border protected area in the Danube Delta and was ready to co-operate with neighbouring states.

The Committee asked that Recommendation No. 111 be fully implemented and asked Ukraine call for a meeting of the states signatories of the Agreement⁵, under the auspices of the Council of Europe, and provide to the Committee the EIA finished in April 2006, including the compensatory measures foreseen.

2007: The Committee requested to Ukraine to forward to the Secretariat the documents and scientific reports mentioned by the delegate of this country during the Standing Committee meeting, including the EIA and compensatory measures. With the agreement of Ukraine, the Committee decided to carry out an on-the-spot visit in 2008.

⁴ See Standing Committee report [[document T-PVS \(2004\) 16](#)], page 13.

⁵ Agreement between the Ministry of Environment and Spatial Planning of the Republic of Moldova, the Ministry of Waters, Forests and Environmental Protection of Romania and The Ministry of Natural Resources of Ukraine on cooperation in the zone of Danube Delta and Lower River Prut nature protected areas, signed at Bucharest on June 5, 2000

2008: The on-the-spot visit was carried out in July, by the same expert who visited the Delta in 2004. The main conclusion of the visit was that **there had been no major changes on the ground since 2004** and that the monitoring had not been as performant as required. Moreover, there were still important concerns in respect to the possible environmental impacts of Phase I of the project. A full EIA was not yet available.

Ukraine informed it had decided to repeal the final decision to proceed with Phase II of the project and take the necessary steps to undertake a full EIA following international standards so as to comply with obligation under the Bern Convention, the ESPOO Convention and other relevant conventions and commitments. The Committee reiterated its concern and urged the full implementation of its Recommendation and asked Ukraine to report to the Standing Committee.

2009: An informal consultation meeting of the Conventions dealing with the Bystroe Channel took place and delivered a “joint statement” expressing concern for the developments related to the construction of the channel, including the most recent building of a dam at the mouth of the Bystroe channel.

Ukraine did not submit the EIA requested by the Standing Committee already three years before. The Secretariat of the Espoo Convention informed about the position of its Implementation Committee, where the Bystroe project continued to be discussed. This Committee considered that works under Phase II of the project would represent a further breach of Ukraine’s obligations under the Espoo Convention, and expressed concerns about the EIA documentation submitted.

The Standing Committee reiterated its concern, encouraged continuation of transboundary co-operation, and asked again Ukraine to report at its next meeting.

2010: The European Union informed the Council of Europe that, end of January, Ukraine had adopted a final decision allowing for the full implementation of the Bystroe project, including Phase II.

Despite several reporting requests all over the year, the report by Ukrainian authorities was delivered on 1st December only, too late for being assessed by the Standing Committee meeting.

The Committee called for a more regular exchange of information and agreed to the creation of a Select Group of Experts to facilitate dialogue on the case-file. It was further agreed that the Group would meet after relevant Parties and the Chair of the Standing Committee accept the terms of reference.

2011: the Chair of the Standing Committee prepared and forwarded to the concerned Parties the proposed terms of reference for the Select Group of Experts already in January. However, Ukraine communicated not being in a position to agree on them.

In its reports, Ukrainian government continued to maintain that the results of the monitoring carried out confirmed that the project would not generate significant negative impact for Bern Convention’s species and habitats in the Ukrainian side, nor in the Romanian part of the delta.

Romanian government, on the contrary, continued to question the quality of the EIA (which the Standing Committee was still waiting for) and of the monitoring measures.

Moreover, Ukraine received warnings for non-compliance at both Espoo (Geneva, June 2011) and Aarhus (Chisinau, July 2011) Convention’s MOPs.

The Standing Committee asked again the three concerned Parties to report to the first Bureau meeting in 2012 about the implementation of Recommendation 111 (2004) and instructed the Secretariat to request the opinion of the other concerned stakeholders, including Conventions and NGOs, on the quality of the EIA.

2012: Only the WWF replied to the Secretariat’s request of information which was addressed to a number of relevant stakeholders. The WWF submitted a short analysis of the gaps of the Ukrainian EIA,

concerning not only the methodology, modelling and scientific base of the assessment, but also regarding the modalities of the public consultations and the review carried out by the international experts at the request of Ukrainian authorities.

August, Ukraine finally sent the EIA to the Secretariat and informed that the Ramsar Convention had closed the file open on the same issue under its own mechanism. It therefore requested this case-file to be closed too. Romania strongly opposed the closure of the file. After a secret ballot, the Committee decided to keep the file open and reiterated its reporting requests to the Parties and other relevant stakeholders.

2013: In January the Ramsar Convention confirmed that the file opened under Article 3.2 of the Convention (human-induced negative changes) had been recently closed, based on the report submitted by the country, and “*on the consideration that the Ramsar Administrative Authority in Kyiv has taken the responsibility to declare publicly that no negative change would occur through the planned works*”.

In April the Bureau discussed the possible follow-up to this complaint, and considered several possibilities: to simply send the file to the Standing Committee; to set up a working group tasked to analyse the EIA, option which was already attempted in the past without success and which would risk overlapping with the work of other Conventions; to look for an independent expert who would accept to prepare an analysis of the situation on a voluntary basis; to close the file in order to ensure coherence with the position taken by the Ramsar Convention; to encourage the three concerned Parties to schedule, as soon as possible, a meeting of the Joint Commission established under the Agreement concluded between the authorities competent for environmental protection of Romania, the Republic of Moldova and Ukraine on cooperation in the zone of the Danube Delta and Lower Prut.

Finally, the Bureau retained the last option.

The Joint Commission hold its second meeting since its establishment a few days before the Standing Committee meeting. The report of the meeting was presented by the Romanian hosts directly to the Delegates. The Parties members of the Joint Commission could reach agreement on a number of issues related to co-operation and information exchange. But Ukraine and Romania continued to disagree on the impact and ecological consequences of the Bystroe project, as well as on the scale and nature of the works already implemented. The latter is an issue which the Committee couldn't clarify yet due to the divergent opinions of the concerned Parties and the lack of evidence-base information. Moreover, the nature of the works makes anyway impossible for the staff of the Convention to assess their scale even through an on-the-spot visit.

The Committee decided to keep the file open and instructed the Bureau to analyse the report of the meeting of the Joint Commission, and to continue information exchange with the Espoo Convention.

2014: In the framework of the review of compliance of Parties with the Espoo Convention, the Implementation Committee recommended to Espoo MOP to declare still effective the caution issued to Ukraine at its 4th Session (2011), as well as to address a number of requests to Ukraine, namely:

a): to adopt the relevant legislation and to bring the project in compliance with the Convention by the end of 2015;

b): to report to the implementation Committee every year on the legislative measures adopted, on the concrete steps undertaken to bring the Project into full compliance with the Convention, on the implementation of the recommendations issued by the Implementation Committee.

The MOP endorsed the finding of the Implementation Committee, including the statement that the decision of Ukraine to continue dredging activities, “*such as the Action Plan adopted by decision No. 187 if 27 July 2013, may indicate a further breach of its obligations under the Convention*”. Moreover, the MOP confirmed the caution to Ukraine and requested to the latter to continue informing Romania about the monitoring results, and to consult with Romania on the post-project analysis.

APPENDIX I

Decision of the Standing Committee (adopted on 3 December 1999) on the lack of appropriate conservation of Laganas Bay, Zakynthos, Greece

The Standing Committee Convention on the Conservation of European Wildlife and Natural Habitats, acting under Article 14 of the Convention,

Recognising that the beaches of Laganas Bay are very important nesting sites for the endangered loggerhead turtle *Caretta caretta*, listed in Appendix II of the Convention;

Recalling the obligations of the Contracting Parties under Article 4 of the Convention to take measures to ensure the conservation of fauna species specified in Appendix II of the Convention;

Recalling that Article 4 of the Convention asks Contracting Parties to give special attention to the protection of areas of importance for the migratory species specified in Appendix II (such as *Caretta caretta*) and which are appropriately situated in relation to breeding areas;

Recalling that Article 6 of the Convention requires Parties to ensure the special protection of the wild fauna species specified in Appendix II and that the deliberate damage to or destruction of breeding sites is particularly prohibited in this context;

Recognising that the nesting beaches of *Caretta caretta* in Laganas Bay fall unmistakably within the scope of Article 4 paragraphs 1 to 3 and of Article 6 of the Convention;

Having been informed of a number of facts contributing to the deterioration of the nesting beaches of *Caretta caretta* in Laganas Bay;

Recognising that it has not been possible to find so far an acceptable balance between development and conservation in this case;

Recalling and confirming the positions it has taken on this issue, namely its Decision of December 1986, its Recommendation No. 9 of 1987, the measures it invited Greece to examine in 1989, the Declaration it transmitted to the Committee of Ministers in December 1992, and its Declaration of December 1993;

Noting that the Committee has discussed this case 13 times since 1986, without substantial positive results;

Recalling its Decision of 24 March 1995;

Noting with regret that Greece has failed to demolish 13 illegal buildings surrounding the Dafni beach;

Noting with regret that Greece has failed to demolish other illegal buildings in the area of Laganas Bay;

Noting with regret that many important parts of its Recommendation No. 9 (1987) have not been implemented by Greece;

Noting with regret that Greece has failed to create a national marine park in Laganas Bay;

Recalling the terms of Article 18 of the Convention, and the rights of Contracting Parties concerning the settlement of disputes;

Taking into account that the European Commission has taken this case to the Court of Justice of the European Community;

Deeply concerned that the credibility of the Convention is at stake:

DECLARES that in the present case Greece has failed to comply with the conditions set up in its Decision of 24 March 1995;

DECIDES that in the 13 years it has discussed this case, the Committee has fulfilled more than sufficiently its obligations under Article 18, paragraph 1, of the Convention;

DECIDES to close the file.

APPENDIX II

Article 18 of the Convention

1. The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise.
2. Any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled on the basis of the provisions of the preceding paragraph or by negotiation between the parties concerned shall, unless the said parties agree otherwise, be submitted, at the request of one of them, to arbitration. Each party shall designate an arbitrator and the two arbitrators shall designate a third arbitrator. Subject to the provisions of paragraph 3 of this Article, if one of the parties has not designated its arbitrator within the three months following the request for arbitration, he shall be designated at the request of the other party by the President of the European Court of Human Rights within a further three months' period. The same procedure shall be observed if the arbitrators cannot agree on the choice of the third arbitrator within the three months following the designation of the two first arbitrators.
3. In the event of a dispute between two Contracting Parties one of which is a member State of the European Economic Community, the latter itself being a Contracting Party, the other Contracting Party shall address the request for arbitration both to the member State and to the Community, which jointly, shall notify it, within two months of receipt of the request, whether the member State or the Community, or the member and the Community jointly, shall be party to the dispute. In the absence of such notification within the said time limit, the member State and the Community shall be considered as being one and the same party to the dispute for the purposes of the application of the provisions governing the constitution and procedure of the arbitration tribunal. The same shall apply when the member State and the Community jointly present themselves as party to the dispute.
4. The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote. Its award shall be final and binding.
5. Each party to the dispute shall bear the expenses of the arbitrator designated by it and the parties shall share equally the expenses of the third arbitrator, as well as other costs entailed by the arbitration.