

Strasbourg, 14 March 2016  
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**T-PVS/Notes (2016) 1**

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 -**

**MARCH 2016**

*Secretariat memorandum  
prepared by  
the Directorate of Democratic Governance*

## IMPLEMENTATION OF THE CONVENTION: FILES

### 1.1 Specific sites - Files open

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

*(IdA)*

This case concerns the building of windfarms in Bulgaria, at Balchik and Kaliakra, on the Black Sea coast. The NGO that submitted the complaint 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 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 had the potential to endanger the coherence of the area as a wintering ground for the Red-breasted Goose as the windfarm was 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.

The European Commission informed about the developments of the case pending before its internal instances, and that a reasoned opinion was addressed to the country calling for compliance 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. No information was submitted by Bulgarian authorities. 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 did 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 informed that the AEWA Standing Committee was still waiting for a reply to the proposal of conducting an advisory mission. 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 measures but noted 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 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, although the Ministry of Environment of Bulgaria had informed that a new EIA procedure would start soon.

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, which informed having referred Bulgaria to the European Court of Justice (ECJ) 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 No. 130 (2007). Moreover, concerning the windfarm project in Durankulak Lake, suspended by the Ministry, the NGO informed about the last decision of the National

Court, delivered in July 2014, which ruled against the Ministry of Environment and Water. As a result, the windfarm project was again on the development agenda. 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. In addition, the Committee strongly invited Bulgaria to reconsider its position regarding the IRP mission proposed by the AEWA.

In 2015 the reports submitted by the authorities emphasised on the actions undertaken to implement Recommendation No. 130 (2007) and recalled that since 2012 the authorities were in the process of reconsidering the authorisations issued for projects not already implemented, thus eliminating 90% of the approved projects. Furthermore, all windfarm projects in Natura 2000 sites were now subject to EIA which are to be conducted following strict requirements and conditions. Moreover, although the general impact of wind turbines on birds had not been assessed yet, some monitoring was going on at the initiative of wind parks operators.

The authorities also mentioned 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 on the effective implementation of environmental legislation for wind farms was produced in cooperation with NGOs, taking into account both EU and Bern Convention guidelines on windfarms and protected areas. Also, the authorities mentioned some projects carried out with EU funds for reducing the mortality risk of specific species.

Besides, the authorities also stressed that Kaliakra SPA has been expanded in 2014, and informed that the procedure for the declaration of a new SPA in Dobrudzha region had been completed. Moreover, new areas of steppe habitats were included in Dobrudzha SCI in view of increasing its diversity. Also, the authorities finalised a draft management plan for the whole territory in Kaliakra region, covering several Natura 2000 sites. The management plan included 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.

The NGO produced again an overall analysis of the implementation by Bulgaria of relevant Standing Committee's recommendations, showing mitigated conclusions: some efforts were taken in the most recent years but without 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 were partially implemented. Among the main problems, the NGO noted a persistent low quality of EIAs and, most important, inaction regarding dismantling or relocating the problematic windfarms. This was for instance the case of the tree windfarms in Kaliakra, which were still operating despite evident impact on the biodiversity of the protected site. Moreover, the NGO presented an analysis of the efficiency of the

measures undertaken to meet the requests of the Standing Committee and invited the Standing Committee to adopt an official opinion on the quality of the results so far achieved, together with further guidance for future efforts.

As requested by the Bureau, the case was also discussed at the 5<sup>th</sup> Meeting of the Group of Experts on the conservation of birds, in October 2015. The Group discussed the reports presented by the Party and the complainant and agreed to communicate to the Standing Committee its strong worries for the conservation of birds (both breeding and migratory species) in the region, stressing that this matter concerns all Parties given that the planned windfarms, as well as the existing ones, affect or endanger also migratory birds.

At the 35<sup>th</sup> Standing Committee meeting the Parties assessed the case and further considered the opinion of the Group of experts, and the worried of the representative of Eurobats in relation to the development of windfarms and the corresponding loss of protected habitats, with consequent negative impacts on bats' conservation. The representative of the AEWA also noted the need to ensure that an independent, comprehensive and quality post-construction monitoring is carried out, together with the need to strengthen the EIA procedures in order to provide for improved and high quality assessments of windfarm proposals. He further noted that the Natura 2000 network is insufficient with respect to the coverage of red-breasted goose feeding areas and the measures put in place by the Government for Special Protected Areas under the EU Birds Directive would need to be complemented in order to avoid loss of and impact on the red-breasted goose habitats/

Bulgaria is invited to carry out a comprehensive, independent and quality assessment of the impacts of windfarms in the region, based on existing data. The Standing Committee might provide advice concerning the consultants or entities to be mandated with this task.

The delegate of the European Union informed that the judgement of the case pending before the ECJ was expected in January 2016. However he recalled that the Opinion of the Advocate General – released in October – supported all the claims moved by the European Commission and namely:

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.

In conclusion, the Committee decided to keep the case-file open, emphasising on the 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 the relevant Recommendation, and to carry out a comprehensive, independent, and quality assessment of the impact of windfarms' developments in the concerned area. It further instructed the Bureau to follow-up on this case, prior to the next Standing Committee meeting.

Mid-December 2015 the Secretariat addressed the decision of the Committee to Bulgarian authorities requesting precise information on their plans to address the concerns and requests raised at the last meeting.

However, in the report submitted end of February 2016, the national authorities only mentioned that the first violation found by the ECJ was duly removed as the necessary territories were added to special protected zone “Kaliakra”, 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. Unfortunately, no other relevant information was submitted concerning the implementation of the obligations stemming from the Convention, as well as the measures recommended in Recommendation No. 130 (2007) and the decision of the Standing Committee.

The complainant also submitted a (spontaneous) report, deploring the lack of any actions since the last decision of the Committee and the ECJ judgment. According to BirdLife Bulgaria, the decision of the ECJ would directly imply the need for immediate action to prevent further damage, without waiting for the results of any independent assessment studies which, in addition, have not yet been undertaken. The same conclusions would stem from the decision of the Standing Committee that deplored the lack of timely implementation of the measures recommended. The report of the complainant further identifies the actions mentioned in Recommendation No. 130 (2007) whose implementation is relevant also for compliance with the ECJ ruling.

The NGO asked the Bureau of the Convention to have a closer look at the situation, including by evaluating the possibility of an on-the-spot appraisal to the area.

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

(*IdA*)

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 16th 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*].

The Standing Committee is asking Cyprus to send the management plan for the area since the year 2008. At the same time, it requested adequate protection for the area of Limni. Among its other requests, the Committee several time reiterated the need to fully implement Recommendation No. 63 (1997), to create a National Park and ensure the maintenance of the ecological integrity of the area, and to apply the ecosystem approach to the Akamas peninsula, including Limni.

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.

At the 31<sup>st</sup> Standing Committee meeting the Parties noted the absence of delegates of Cyprus and analysed the report of the NGO (Terra Cypria), informing that a formal notice letter and a reasoned opinion were sent by the EU to the authorities on the insufficient SPA proposal for the area. In fact, according to Terra Cypria the proposal of the 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 designated was inadequate. The report further stressed that the management plan for the Limni area (prepared in the meantime) was not yet implemented and, in any case, the area designated comprised such a narrow strip of land that it would not be able to protect turtles from human interventions taking place just beyond. Moreover, developments were taking place all the time and the local authorities were still allowing unsuitable activities.

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.

In 2012 the Government of Cyprus 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 said 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. The authorities also 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 when available to the Secretariat of the Bern Convention.

At the 32<sup>nd</sup> Standing Committee meeting the delegate of Cyprus further 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 and other Delegates.

The Committee decided to keep the case file open and encouraged Cyprus to fully implement its Recommendation N°63 (1997).

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, because a local developer had proposed the construction of two golf courses surrounded by villas and hotels in the adjoining Limni area, with potential negative impact on 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 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 that 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.

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 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 were 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 was 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 last Standing Committee meeting 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 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. Unfortunately, no news has been received by the preparation of the present report.

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

*(CB)*

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 (par.2) and that the option of enlarging the current road be abandoned and alternative routes outside the gorge be studied (par.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 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 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 December 2014 and 24 March 2015. On 13 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 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 [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 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 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 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 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 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 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 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 requests that the Bureau re-open the case-file in order to assist Bulgaria to fulfill its obligations to protect the Kresna Gorge.

### **To be assessed at the September Bureau meeting**

- 2004/1: Ukraine: Project for a waterway in the Bystroe estuary (Danube delta)
- 2007/1: Italy: Eradication and trade of the American grey squirrel (*Sciurus carolinensis*)
- 2010/5: Greece: threats to marine turtles in Thines Kiparissias
- 2012/9: Presumed degradation of nesting beaches in Fethiye and Patara SPAs (Turkey)
- 2013/1: Hydro power development within the territory of Mavrovo National Park (“the former Yugoslav Republic of Macedonia”)

### **1.2 Possible files**

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

(IdA)

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 Aydıncık, 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 Balikli 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. Balikli 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 Balikli 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 Balikli 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 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 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.

➤ **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 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.

The meeting of the Select Group of Experts on invasive alien species is scheduled to take place in Rome on 31 March - 1 April 2016. The authorities of Poland addressed a timely updated report, informing 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 slower 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).

### **1.3 Complaints on stand-by**

#### **➤ 2012/5: Sport and recreation facilities in Cıralı key turtle nesting beach (Turkey)**

In May 2012 the Secretariat received a complaint submitted by the Ulupinar - Çıralı community, questioning the allocation of a land including 75 % of Çıralı beach to “Orman Spor” – a football society - for the establishment of football grounds and recreation facilities. Çıralı beach is in fact among the 20 key nesting areas in Turkey and has been designated as 1<sup>st</sup> Degree Natural Site, belonging to the National Park Olimpos-Beydaglari. Furthermore, the area is well known in Turkey as it has been pioneer in establishing eco-agriculture; for instance, the local community set-up a Cooperative which is in charge of managing and conserving the area.

According to the complainants, the land was allocated to the sport society by the Ministry of Forests, while the Ministry of Environment and Development delivered a permit to use the area as “C Class” excursion area”, i.e. allowing for the touristic exploitation of the site. The complainants highlighted that Orman Spor's sponsor is in fact a tourism promoter. Therefore the complainants expressed strong worries regarding the impact that new infrastructures and an increased human presence would certainly have on the nesting activity of *Caretta caretta*.

The complainant further informed that some local residents and the Bar Association of Antalya had lodged a complaint against the Ministry of Environment and Development, requesting both the cancellation of the decision converting the area into a “forest recreation area” and the decision to allocate it to “Orman Spor”. The 2<sup>nd</sup> Administrative Court of Antalya delivered its ruling, quashing the decision consisting in allocating to Orman Spor the land in question, but confirming the decision regarding the land uses and development of the area. Right afterward, the complainants applied to a regional court which, in June 2012, quashed the array of the Antalya 2<sup>nd</sup> Administrative Court which had then to reconsider its position and emit a new judgment.

The Bureau strongly regretted the absence of an official report from Turkish authorities on such an important issue and decided to forward this complaint to the Standing Committee as a possible file.

At the meeting of the Standing Committee in November 2012, the delegate of Turkey apologised for the lack of reply to the reporting requests, explaining that the authorities preferred to wait for the Court decision before informing the Secretariat. He emphasised that, following the ruling by the 2<sup>nd</sup> Administrative Court of Antalya, the authorities gave back the protection status to the site while waiting for the decision on the appeal.

The representative of MEDASSET welcomed the information provided by the delegate of Turkey and stated it hoped that the re-designation of the area would mean better protection in Cirali.

The Committee decided to forward the complaint to the Bureau for its follow-up as a complaint on stand-by. The Secretariat addressed a request of possible update to the Party in May 2013. The Turkish authorities informed that the decision of the Court was still pending, and that the construction works were suspended in the meantime.

At its meeting in September 2013, the Bureau welcomed the suspension of the works pending the court’s decision. No new information was submitted since. For this reason, in January 2014 the Secretariat addressed two separate letters, respectively to the authorities and the complainants, requesting a short report on the situation, including any useful information regarding the complaint pending before the national court. The Secretariat didn’t receive any reply from the complainants. From the authorities’ side, a short note sent in March 2015 confirmed that the decision of the court was still pending and that, in the meantime, the area continued to enjoy the protection granted to the site, with no sport activities implemented.

The same information was reiterated in a short note submitted by the authorities in February this year: the case is now pending before the Supreme Court and there is no decision yet. About the current status of the area, the site is still a protected area under the control of governmental institutions and there is no sports or other facilities on the site. A member of the Secretariat visited the area last summer on a private visit and confirmed that there are no sport facilities on the site. However, the signage and controls could be improved, as they currently rely on the efforts of the NGOs. No news was received by the complainant.

#### ➤ **2012/7: Presumed illegal killing of birds in Malta**

This complaint concerns the bird-killing by Maltese nationals during the spring season, in presumed violation of Articles 6-9 of the Bern Convention. The complaint was lodged by a private citizen and registered by the Secretariat in July 2012.

The complainant referred to CABS and BirdLife 2012 reports, according to which the phenomenon in Malta concerned a number of migratory birds whose populations were suffering a dramatic decline, such as the Honey Buzzard and the Golden Oriole, or which were legally huntable in Malta but red listed in other European countries (like for example Golden Plover, Lapwing and Skylark). According to BirdLife Malta, the poachers were specifically targeting raptors and Herons, as well as other rare migratory birds.

The report sent by Maltese authorities in January 2013 informed about the legal framework put in place to transpose into the national legislation both the provisions of the Bern Convention and those of the

EU Directive 2009/147/EC on the Conservation of Wild Birds (Birds Directive), stressing that all species of birds which could be hunted or taken under Maltese legislation were either listed under Appendix III of the Bern Convention or not listed in any of its Appendices. Regarding the EU Directive, Malta recalled the derogations which allow, under strictly controlled and supervised conditions, to legally hunt certain species protected under the Directive. Moreover, the import or export, sale, transport for sale, keeping for sale or offering for sale of live, or dead birds, or any recognisable parts or derivatives of birds protected under the Maltese Regulations was prohibited and appropriate fines are foreseen for the offenders.

Furthermore, the authorities questioned the statement that the consequences of hunting on Malta are catastrophic for many European migrant bird species since they affirmed that huge passages of migratory birds over Malta were considered to be rare. The report further detailed special provisions regarding spring hunting in Malta, stressing the government's commitment to their enforcement, and highlighting that spring hunting was subject to a stricter regime of control than that provided for in the Conservation of Wild Birds Regulations as applicable.

Concerning the illegal hunting of birds of prey, the government affirmed its commitment towards condemning it and informed about the applicable legislative framework, revised in the past years, and which included severe fines for the offenders.

On the (legal) hunting of species listed in Appendix III of the Convention, the government report stressed that this was allowed under certain conditions which ensured that the population concerned were taken out of danger, as requested by the Convention.

In April 2013, the Bureau asked the Group of Experts on the conservation of birds to examine this complaint at its forthcoming meeting. It further invited the authorities of Malta to attend the 2nd Conference on Illegal killing, trapping and trade of wild birds, as well as the 4<sup>th</sup> Meeting of the Group of Experts on the conservation of birds, and to report to the Group.

A delegation of Malta positively replied to the request of the Bureau, and so did BirdLife Malta, whom supported the complainant. The discussions on the complaint raised the interest of the participants, and questions arose for example on the quota for hunting turtle doves in the spring, or on the figures relating to the number of turtle doves passing through the island. The Group decided however to leave to the Standing Committee's institutions to decide on the status of the complaint.

Moreover, in July 2013 the European Union (European Commission) sent a specific report recalling that the Commission raised the issue of enforcement of wildlife regulations with the authorities of Malta in several occasions, calling for appropriate measures to ensure its effectiveness.

In this regard the Commission acknowledged that some measures had been taken by the authorities, for instance concerning penalties possible under Maltese legislation; the Commission further noted a substantial record of prosecutions and referred that the government was envisaging **the setting up of a specialised Wildlife Crime Unit**, exclusively dedicated to enforcement of wildlife regulations.

The report further confirmed that the judgment of the ECJ left open the possibility of a limited spring hunting derogation of Turtle Dove and Quail, under strictly supervised conditions, and informed that relevant national regulations appeared to comply with the parameters of the Court's judgment. Concerning the reports on derogations under Art. 9 of the Birds Directive, the Commission confirmed that Malta should have sent three reports since 2010 (for the period 2009-2011) and that none of these reached the Secretariat.

At its meeting in September 2013 the Bureau acknowledged the tangible efforts of the authorities, and decided to keep it as a complaint on stand-by. It further instructed the Secretariat to request more information regarding the assessment of the autumn migration season to both the Party and the complainant.

The report submitted by the national authorities in March 2014 provided detailed information on recent institutional and policy developments including: the establishment, in July 2013, of a Wild Birds

Regulation Unit with a Specialist Enforcement branch; an undergoing inter-ministerial consultation for the setting up of a national Wildlife Crime Investigation Unit within the Malta Police Force; the setting-up - in October 2013 - of a working group to develop a **national strategy for the eradication of illegal killing, trapping and trade in wild birds**; a special focus given by the Malta Ornithology Committee to the issues object of this complaint.

Furthermore, **amendments to the legal regime** on the conservation of wild birds had allowed for rendering the system of dealing with certain types of offences much more effective, and resulted into a considerable increase in the amount and range of penalties for all types of offences. The report also presented the specific legal framework governing autumn 2013 hunting and live-capturing seasons (1 October 2013 - 31 January 2014) which contemplated particularly strict conditions for hunting and trapping and ancillary activities regarding wild birds.

For what concerns enforcement, the report informed that the Administrative Law Enforcement Unit **doubled its human resources** during peak raptor migration period; as a result over 40 offences of various categories were disclosed in a period of three weeks.

The report provided comparative statistics between the 2012 and the 2013 hunting seasons, showing an improvement in enforcement of legislation. The latter extended to cases of suspected illegal possession and taxidermy of protected species. Maltese authorities further produced a table detailing the offences and Court's decisions on cases disclosed during the period autumn hunting season. The table showed an **increase in the financial fines** (up to 4,600 Euros in one case) although none of the convicted was condemned to imprisonment.

The last part of the report included an interesting list of remaining challenges and commitments which showed the plans of Maltese authorities for the short and medium term, in line with the Bern Convention Tunis Action Plan 2020.

In its report submitted in March 2013, BirdLife Malta acknowledged the amendments and improvements to the legal framework for bird protection, but affirmed that, despite being positive and in favour of harsher penalties, the changes in regulations did not result in any significant improvement in implementation and enforcement. The latter remained insufficient to prevent extensive illegal incidents of hunting and trapping. More particularly, the NGO was still concerned by insufficient controls and widespread illegal hunting and trapping practices which BirdLife had witnessed and documented.

Further worries were expressed regarding the specific derogation regime under the EU legislation which allows for spring hunting and autumn trapping in Malta, with the result of exacerbating the illegal hunting and trapping of migratory birds, and undermining prevention.

Spring hunting derogations for Turtle Dove and Quail were particularly denounced since they were considered to be inadequate for granting the proper conservation of the species. The system of controls in place under these derogations presented, according to BirdLife Malta, several failures which already based the ground for the verdict of the European Court of Justice against Malta. Moreover, the authorities failed – in the opinion of the complainant – to ensure the necessary strict regime of supervision and proportionality in the numbers of birds killed.

The same systematic failures for the spring hunting season were relevant for trapping derogations for Song Thrush and Golden Plover, with a lack of enforcement leading to the indiscriminate trapping of birds in particular during derogated seasons.

Moreover, BirdLife considered that some of the amendments to the legislation paradoxically weakened enforcement in return. On the last issue, the report provided a few concrete examples, including the consequences of the removal of the 50 euros spring hunting license fee, or the removal of a 3pm curfew in September 2013 aimed at protecting migrating birds of prey during the autumn season.

The use of bag limits and their calculation was also questioned, particularly because BirdLife considered this measure as very difficult to be enforced.

Concerning illegal hunting of birds of prey, BirdLife Malta reported 65 incidents of shooting at protected species, 62 incidents of protected birds flying with gunshot injuries and 21 birds belonging to 14 different species received by the organisation with gunshot injuries for the sole derogation period of the 10 to the 30 April 2013. Again, the resources allocated by the authorities to tackle wildlife crime were considered to be insufficient by BirdLife Malta which denounced lack of improvements in this sense.

Finally BirdLife Malta was of the opinion that abusive derogations which lead to the further indiscriminate illegal killing and trapping of birds over and above customary hunting seasons, should not be permitted until Maltese authorities show concrete improvement of the situation on the ground.

At its meeting in April 2014 the Bureau assessed the complaint and was pleased to acknowledge the timely and precise communications from the Maltese government, as well as the seriousness with which the authorities were addressing the problem. The changes in the national legislation were considered as an expression of the authorities' good will, but the Bureau recognised that the results of their practical implementation weren't always encouraging. The Bureau expressed again concern for poor enforcement, noted the worrying reports about still widespread illegal killings across the country, and called on an even stronger political will towards eradicating these practices.

The Bureau further instructed the Secretariat to contact the Maltese authorities for an updated report about the output of next spring season, enforcement of legislation, and checks of the bag limits. Coordination with the European Union, namely on the issue of derogation reports was considered to be an asset.

In reply of the Bureau request, Maltese authorities prepared a detailed report on the outcomes of the 2014 Spring hunting season, describing the legal and policy basis for the application of a derogation allowing for spring hunting, the analysis of the 2013 autumn bag data for Turtle dove and Quail, the requirements and procedure for the determination of the 2014 spring hunting bag limit, as well as more in depth and updated information on the institutional, legal, and administrative improvements already presented in the previous report and which allowed for better enforcement particularly in preparation for, and during the limited period of the derogation.

The main conclusions of the authorities were that there had been an improvement of the verification mechanisms for bag data reporting and collection (a migration monitoring study carried out in April 2014 was attached), but also in transparency in decision making and consultation. Moreover, the mandatory hunting licence return requirements, the penalties for late returns, an exceptionally high rate of licence returns achieved in February 2014, and the multiple levels of data extraction quality checks provided evidence of the ongoing efforts put in place to improve the quality and reliability of autumn bag data. Furthermore, the government report included considerations on the conservation status of the species concerned, which were taken into account and shared with stakeholders. The arsenal of legal deterrent put in place in the past two years was leading, in the authorities' views, to a decline in the number of serious hunting-related violations, particularly a reduction in the incidence of illegal shooting or trapping of protected species. In the light of the extensive information submitted the authorities requested the Bureau to consider ascertain Malta's fulfilment with the requirements of the Bern Convention.

In its report, the complainant again recognised some commendable efforts from the authorities, but showed increased disappointment with regards to the use of derogations under EU legislation. According to the complainant, a lack of action on elements of the derogation allowing spring hunting of Turtle Dove and Common Quail and trapping of Golden Plover and Song Thrush had, in July 2014, led Malta issuing a legislation permitting the trapping of seven species of wild finches, all protected species, which would be justified by means of a further derogation for stated traditional purposes. Furthermore, BirdLife Malta denounced changes in the legislation over the past 10 months on which the authorities failed to report, and which could be considered as being in favour of increased hunting opportunities. More particularly, BirdLife contested any progress towards enforcement and bag limit verification and on combating illegal killing of protected species. The report listed the presumed failures of the authorities on this matter.



Moreover, the complainant considered the changes in the legislation not in favour of adequate and improved protection (particularly concerning the decision of postponing the curfew permanently at 7 p.m.) and denounced the negative effects of the opening of the trapping season for Song thrush and Golden plover which, on their side, the authorities affirmed doing in the legal execution of the permitted derogations. The re-introduction of finch trapping practices by means of derogation was another matter of concern. The complainant called for immediate attention and intervention from both the Bern Convention and the European Union.

In its report, the European Union recalled that the ECJ ruling against Malta in 2009 found that, exceptionally, strictly limited spring hunting would be possible for Turtle doves and Quails, under controlled conditions, due to very specific circumstances prevalent in Malta. These conditions were set out in the relevant national regulations which established the parameters on how such limited spring hunting could be authorised in Malta in line with the requirements of the EU Birds Directive (Article 9) and within the parameters of the Court's judgment. The Commission was closely monitoring how spring hunting derogations have been applied by Malta over the past few years and declared aware of some problems related to the application and enforcement of the applicable regulations. However, the Commission was in the process of assessing the last report submitted by the authorities and ensured of its commitment to continue the dialogue with the country.

After assessing the information above, the Bureau recognised again the strong commitment of the authorities towards eradicating illegal killing of birds and stressed that, after changes in policies and legislation, a certain time is needed before evaluating their impact and make sure of their adequacy to the purpose. The Bureau decided to reconsider this complaint as a complaint on stand-by at its first meeting in 2015.

Both the authorities and the NGO provided updated report in March 2015.

The national report gave a brief overview of the 2014–2015 autumn hunting season, the enforcement efforts deployed by the Maltese authorities, as well as the relevant enforcement statistics. The latter indicated that the **substantial increase in the penalties for offences** over the past 16 months provided a substantial legal deterrent, whilst the doubling of enforcement effort on the ground ensured that those who break the law are apprehended and effectively prosecuted according to legislation. The report also described some **technology-driven improvements** implemented for more efficient enforcement and governance.

Concerning the hunting licenses the authorities informed that their number remained relatively stable over the past 6 years.

On enforcement, the authorities reinforced the surveillance during the peak migration period, deploying over 95 enforcement officers on the field, complemented by another 55 agents until the end of the hunting season. These officers **received specialised training** on enforcement priorities and techniques. Moreover, the **number of inspections doubled** in comparison with 2013, and more than quadrupled in comparison with 2012. Night patrols were organized during special periods in areas where protected species were identified, and the controls were carried out combining different inspection's techniques.

The authorities highlighted **a clear trend for the decline in crime levels** across virtually all categories of bird-related crime, particularly in relation to major offences. In the views of the authorities this success was to be ascribed to the increase in the legal deterrent against abuse, and was an evidence of the zero tolerance policy applied by Maltese authorities to achieve the ultimate goal of the eradication of illegal killing of birds.

In addition, Malta developed an **electronic reporting system** to enable real-time reporting and monitoring of game legally hunted, and implemented a geographic information system which enables field officers to instantly access location-specific regulatory data pertaining to individual licensees.

Future steps would concern an additional stage of the legal reform, whereby penalties for the most serious categories of offences involving protected birds would be raised to levels that would outweigh any hypothetical quantum of illegal gain that may arise out of such crimes. The authorities concluded by requesting the Bureau to declare the compliance of Malta with the requirements of the Convention on the matters dealt by this complaint.

The report submitted by the NGO focussed on the current status of the derogations to the Birds' Directive, on illegal hunting and trapping of birds as well as on the enforcement regime adopted by Maltese authorities.

The NGO expressed serious doubts over the number of catches declared by legal hunters bearing in mind that the almost 11,000 hunters who were licensed to hunt declared a total catch of 2,486 Turtle Dove and 1,689 Quail. In BirdLife Malta's views, these low numbers would be used to push for a full spring hunting derogation season in the near future.

Moreover, while praising the suspension of the hunting season during the peak migration of birds of prey, as the latter had undoubtedly a positive effect on reducing the number of illegal hunting incidents, BirdLife Malta reiterated its request for the re-establishment of a 3 p.m. curfew as an additional and valid deterrent. In fact, the NGO noted that the current 7 p.m. curfew was ineffective for the protection of the vast majority of migrating birds.

On the trapping derogations of Golden plover, song thrush, and seven other species of finches, BirdLife Malta continued to denounce the opening of trapping seasons as a breach of the EU Directives. The NGO also informed that a Letter of Formal notice was addressed to the authorities in October 2014 for the reintroduction of finch trapping in the country. However, the government opened a trapping season for finches between October and December 2014.

The complainant also questioned the effectiveness of the monitoring and field surveillance.

At its meeting in March 2015 the Bureau acknowledged the progress and commitment of Maltese authorities to tackle with the utmost seriousness the issue of illegal killing of birds, also through their active implementation of the Tunis Action Plan. It however asked the authorities to assess whether some of the requests of the NGO could be taken into account, for instance the re-establishment of the 3 p.m. curfew. In light of the further legal reforms announced, the Bureau decided to keep the complaint on stand-by and to re-assess it at its first meeting in 2016. Maltese authorities were requested to attend the meeting of the Group of Experts on the conservation of wild birds (October 2015) and to on the results of the 2015 hunting spring season.

At the meeting of the GoE on the conservation authorities, the delegate of Malta presented the overall reform carried out by the authorities in the past three years to ensure the effective implementation of the Tunis Action Plan. This aimed at strengthening the legislative framework, ensuring proper enforcement at the levels of bird-crime prevention and prosecution, ensuring the efficiency of the judiciary, and addressing cultural change through awareness raising. The latter was the ultimate goal of the governmental strategy against bird-crime. The authorities put in place a robust and comprehensive body of legislation **which increased the financial minimum fine for particularly serious offences by 10 times in three years**, with an automatic minimum 12 months imprisonment for convicted offenders in specific cases. Hunting laws have been embedded within environmental legislation; some penalties have been made mandatory, leaving them out of the scope of judiciary discretion; reporting on cases became mandatory and systematic. Some minor administrative offences have been submitted to on-the-spot fines so to discharge the courts of an additional burden that would delay their decisions in more important cases. The number of officers deployed on field patrols during spring derogation seasons rose from 61 in 2012 to over 80 in 2014-2015. Police officers now receive dedicated training and make use of different surveillance techniques, including GIS tracking. A Game reporting system has been put in place for improving the control of bag limits. The **rate of convictions sensitively increased**, although the number

of major offences disclosed during spring derogation season went down as a result of both the controls and the effectiveness of the deterrent measures put in place. These outstanding results were also acknowledged by conservation NGOs and researchers working in Malta, among which BirdLife Malta and the CABS.

In the absence of a representative of BirdLife Malta, a colleague from BirdLife International presented the report of the NGO. The main concerns related once more to the use of spring hunting and autumn trapping derogations to the Birds Directive, the effectiveness of the controls of the bag limits, the impact that the removal of the 3 p.m. hunting curfews could have on the protection of birds, the reintroduction of a trapping season for golden plover, song thrush and seven species of finches in 2014, again by mean of derogation.

In reaction to both presentations parties expressed satisfaction for the way in which the authorities handled the complaint, and congratulated them for the long-term approach implemented to illegal killing of birds, and for the substantial results already recorded. Parties also noted that the issue of trapping derogation is being assessed by the European Commission and does not fall under the scope of the present complaint.

In reply to a letter from the Secretariat, the authorities submitted a new report in February 2016. This report gives a brief overview of the 2015 - 2016 autumn hunting season, the enforcement effort deployed, as well as the relevant enforcement statistics.

Concerning the legislative measures, the country has already embedded a list of 8 gravity factors into national legislation, as requested by the general Standing Committee Recommendation adopted last December. The Conservation of Wild Birds Regulations now covers a much wider list of species, including species that do not naturally occur in the wild state in the territory of the EU. The authorities competent for enforcement now enjoy the same powers than the environment inspectors, and the Malta Ornithology Committee has been enabled to make recommendations. The list of offences to qualify for maximum penalties has also been extended. The legal reform will continue on this path in the coming months and will address hunting licensing.

On the autumn hunting season the report informs about the number of licenses, on the inspections carried out and the number of offences detected (131 offences, 58 persons being subject to criminal prosecution and 70 persons subject to administrative fine). In 2015, 25 court sittings (each sitting comprising multiple hearings) which resulted in 125 convictions and 4 acquittals with the rest of the cases pending further hearing.

The autumn season was characterised by the lowest ever number of offences concerning illegal targeting (killing or trapping) of protected birds, as showed in the comparison of the enforcement statistics presented in the report. The authorities also carried out investigation of illegal possession of protected birds.

The NGO didn't reply to the reporting request sent by the Secretariat.

➤ **2013/10: Impact of corn monoculture on the conservation status of protected species in Alsace, France**

(CB)

This complaint was submitted in November 2013 by the NGO "*Sauvegarde Faune Sauvage*", and concerns the presumed destruction of 75-80 % of the flora and fauna of Alsace region because of the monoculture of corn in the plains of Haut-Rhin.

The complainant denounces the very strong decrease in Alsace of the populations of red kite (*Milvus milvus*) and of Western marsh-harrier (*Circus aeruginosus*) as well as of corncrake (*Crex crex*) and moor frog (*Rana arvalis*), all species listed in Appendix II of the Bern Convention. The Eurasian curlew (*Numenius arquata*), listed in Appendix III, is also subject to strong regression. According to the complainant the transformation of gravel pits into corn culture led equally, to important decrease of the European green toad (*Bufo viridis*), listed in the Appendix II.

The complaint indicates as well the disappearance from Alsace of Montagu's harrier (*Circus pygargus*), of bustard (family of Otididae) and of tawny pipit (*Anthus campestris*), species listed in Appendix II.

Finally, the complainant evokes the failure by France to comply with the "Habitats", "Birds" and "Nitrates" European Directives (analyses on nitrates being, according to him, almost non-existent).

The Secretariat assessed the complaint and forwarded it to French authorities, together with a reporting request.

By mid-July 2014, the complainant provided additional elements concerning the threats on the species mentioned in the complaint.

According to the complainant, the major threat to these species was the disappearance and fragmentation of meadows in Alsace, mainly due to the development of industrial agriculture and the changes in agricultural practices, and more specifically to the increasing corn monoculture. In Alsace, 726 km<sup>2</sup> of grassland disappeared between 1970 and 2000 (based on Datagreste source of the Ministry of Agriculture and Fisheries).

The report drew attention to the corncrake, listed in Appendix I of the Birds Directive and in Appendix II of the Bern Convention. More alarming, according to the complainant, the Moor frog was considered on the verge of extinction in Alsace. If its presence was proved in the sixties in a vast meadow in Sundgau, the last specimen was seen in the region of Fort-Louis in 2009. The report also mentioned that the decline of the grey partridge, which was the most common bird in the field, reflects the degradation of the biotope.

In August 2014, the French government sent a report prepared by the Regional Directorate of the Environment, Planning and Housing (DREAL) of Alsace.

The report acknowledged that Alsace concentrates a large proportion of protected species, of which about 30 to 40 % are listed as threatened and near-threatened species. This was, in the authorities' opinion, in contradiction with the statement regarding the presumed destruction of 75-80 % of the flora and fauna of Alsace reported by the complainant, otherwise they would have been listed as threatened species.

The French report further analysed the situation of the species listed in the complaint and developed on a number of actions undertaken to improve it. For instance, measures have been developed with the concerned farmers for a "mowing delay" to July, in order to preserve the few remaining corncrakes (*Crex crex*) which nest later. The presence of 13 singing males during the spring 2013 in the sector of Schwenheim was, according to the authorities, absolutely exceptional and was undoubtedly a result of the enforcement of these measures.

The report pointed out that the decrease of the species object of the complaint was only partially due to agriculture, and even less to corn monoculture, a practice which remained stable in Alsace in the past 13 years.

The main causes related to agriculture are linked to the standardisation of agricultural landscape through the simplification of crop rotation and also the reduction of hedges, reed beds, slopes, groves and isolated trees. The fragmentation related to infrastructures and urbanisation and the tourism in natural areas are complementary factors with strong impact on the species in the Alsace plain that concentrates important density of population and habitats, economical activities and developed infrastructures.

The report further listed the public policy programmes implemented in Alsace to contribute to the preservation of the species and their habitats: the Regional Plans of Actions to preserve the threatened species (among which the red kite, the corncrake and the European green toad<sup>1</sup>); the Strategy of designation of protected areas (SCAP); the management of Natura 2000 sites; the Regional Scheme for the Ecological Coherence (SRCE), and an Action Plan supported by the State and the Regional Council - scheduled to be approved by the end of 2014 - that would take into account the reservoirs of biodiversity concentrating in 137 sites for the protection of species on 26 % of the Alsatian territory.

Moreover, the report informed about the measures for the preservation of wetlands and rivers that enabled, between 2007 and 2014, the restoration of more than 800 km of watercourse and 600 ha of protected wetlands in Alsace.

Finally, the French authorities' report disproved the absence of nitrates analysis supposed by the complainant. It underlined that there are more than ten networks of supervision of the quality of groundwater and surface water in Alsace, which analyse the nitrates, the results being available. The nitrates are also assessed on more than 900 points of the Rhine in Alsace. Moreover, based on the regional assessment of the 4th programme of actions of the Nitrates Directive, produced in 2013, the water quality in Alsace is good in 95 % of points of surface water and 75 % of points of groundwater points, above the national average. In addition, the commitment of the authorities to address this issue was also shown by the fact that the Prefect of the Alsace Region signed on 2 June 2014 a Regional Order reinforcing the 5th programme of actions of the Nitrates Directive.

The Bureau appreciated at its meeting in September 2014 the information submitted by the French authorities and noted the efforts of the government in addressing the conservation of the viable species, as requested also under the CBD. Moreover, the Bureau noted that the complainant didn't submit scientific evidence suggesting that corn monoculture is the only driver to the declining of the species mentioned in the complaint.

However, the Bureau agreed that corn monoculture may have a negative impact on habitats and, while recalling that the Convention may not be the most adequate instrument for addressing issues occurring at the very local level, the Bureau decided to keep the complaint on stand-by at least until its next meeting.

The French authorities sent a letter on 19 February 2015 underlining that, as their previous report demonstrates, the corn monoculture may have a negative impact on the habitats of certain species but it could not be the only responsible for the decline of species mentioned in the complaint. The authorities had no additional information to add to what was already provided. They proposed, if the Bureau wishes, to take stock of the evolutions of corn acreage at the end of 2015 and to proceed to an update of the data on the preservation of the species on which the new data will have been collected in 2015.

The complainant sent in February 2015 a new report that refers to several articles or studies related to the corn monoculture and its influence on the soil, water quality and biodiversity. They are dated from 1989 to 2008. Almost always, Alsatian areas are mentioned.

A study from the report explains that the corn dominates the Alsatian landscape because it is the most profitable and requires the least working time. Waiting for a possible change of the economic and political conditions which would produce a more diversified crop rotation system, the study lists some proposals to be explored in order to make the corn monoculture more auspicious to the fauna: divide up the corn plots with strips of cultures favourable to the fauna; create micro-habitats favourable to the small rural fauna, with "islands" scattered in the landscape (isolated trees, grass strips); use of strip-till; rotate with other cultures (legumes); identify the nests of lapwings and other rare species; experiment varieties of dwarf corns; reduce pesticides in general and do not use the most harmful substances.

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<sup>1</sup> <http://www.alsace.developpement-durable.gouv.fr/plans-nationaux-d-actions-r94.html>

At its meeting in March 2015, the Bureau welcomed the proposal by French authorities to take stock of the evolutions of corn acreage at the end of 2015, and to update the data on the preservation of the species accordingly. At the same time, the Bureau stressed that the issues at stake in this complaint should be solved through appropriate mitigation and compensation measures. It therefore acknowledged that some of the proposals put forward by the complainant are acceptable, and asked French authorities to take them duly into consideration for mitigation purposes.

The Bureau also recalled that the EU Common Agriculture Policy (CAP) now also addresses biodiversity conservation and habitats preservation. It therefore instructed the Secretariat to submit this complaint to the European Commission for collecting its views.

The Bureau decided to keep this complaint on stand-by and to re-consider it at its first meeting in 2016. The authorities were requested to report on the results of the proposed assessments, as well as on the implementation of mitigation measures.

In February 2016, the French authorities reiterated that Alsace concentrates a large proportion of protected species, of which about 30 to 40 % are listed as threatened and near-threatened species. This was, in the authorities' opinion, in contradiction with the statement regarding the presumed destruction of 75-80 % of the flora and fauna of Alsace reported by the complainant, otherwise they would have been listed as threatened species.

The French authorities provide an update on the preservation of the species concerned in the light of agricultural practices and the causes of their decline. The decline is mainly attributed to a limited distribution of the species concerned rather than to corn monoculture.

Regarding the decline of the Moor frog, the French authorities highlighted the lack of knowledge as to its causes. They stressed that its decline along the Rhine delta cannot be explained by the simplification of crop rotation which was the case in Sundgau.

The Corncrake has been in constant decline since the 1980s, when its population shrank by 80 per cent. In Alsace, 10-15 pairs were observed in 1980 whereas 3 individuals have been observed annually over the last 10 years. The conservation of this species is directly related to the quality of agro-environmental measures. As late-nesting, this species requires progressive mowing in July. Therefore agro-environmental measures have been taken to facilitate "late mowing" in Alsace. In the rainy spring of 2013, 13 singing male species were observed in the Schwenheim area thanks to the implementation of measures to delay mowing. The report lists Alsatian sites which are being checked for the presence of the Corncrake. No male singing corncrake was observed in Alsace in 2015.

Fewer than ten pairs of the Western marsh-harrier nest annually in Alsace, whereas they were 18 in 1987. The regression of wetlands, the spread of hunting, the human factor and the imbalance created by the feeding of the wild boar contributed to the decline of the species. By addressing these factors, the impact on the species can be lowered.

In 2014, only 25 pairs of Eurasian curlew were observed against 50 in 2009 and almost 70 in 2005. The species is threatened in Alsace for several reasons, such as decreasing wet meadows, intensive agricultural practices (fertilizers, early mowing) and outdoor recreation.

The decline of the red kite in France may be related to changes in agricultural practices further to the destruction or fragmentation of natural areas. In Alsace, the species have been monitored since 1999, which showed a decline in the number of breeding pairs (37-88 pairs in 1999-2002 against 39-52 pairs in 2010, followed by a rise with 34-44 pairs in 2014 and 42-48 in 2015). In Alsace, the species are mainly located in the Alsatian Jura, the Hunchback Alsace and Sundgau. They represented 80 % of the breeding pairs in 2010. According to the Regional Scheme of Ecological Coherence (SRCE), the Hunchback Alsace and Sundgau have the densest network of ecological continuity, with limited agricultural activities.

A number of conservation and protection measures have been taken, including under the Regional Action Plan (2012-2016), such as the monitoring of breeding and wintering populations, awareness-raising and agricultural practices favourable to nesting. The breeding population is slightly increasing in the Alsatian Jura and the Bas-Sundgau, stable in the Alsace Bossue and declining in Sundgau.

The European green toad is very rare and rapidly declining in mainland France. Two main populations are located in Alsace and Moselle, in Strasbourg (Bas-Rhin) and Mulhouse (Haut-Rhin). These areas have little interaction with the Alsace plain that concentrates crop cultivation. According to the Regional Action Plan, the decline is mainly attributable to the reduction of river dynamics and the regression of breeding sites, i.e. shallow and often temporary waterpoints. The main threat to the species is the alteration or loss of habitats rather than the cultivation of gravel pits which has never been observed.

On 7 March 2016, the complainant commented the report of the French authorities.

Regarding the corncrake, the complainant explains that there were no specific “late mowing” measures for this species, for which it should start as from 20 July. The “late mowing” currently in practice is intended to the Eurasian curlew, for which mowing starts as from 1 July. Some slopes are indeed under mowing at 1 September but the management of grasslands is generally intensive.

Regarding the Western marsh-harrier, the complainant specifies that no more than 4 breeding pairs have been observed in 2010-2015. The wild boar preys on the marsh-harrier. The overabundance of wild boars is a direct consequence of corn monoculture and favourable hunting management.

Regarding the Eurasian curlew, the complainant highlights that the monoculture of corn was the main factor in its decline since the 1970s in Alsace. Corn monoculture has contributed to the regression by nearly 70 per cent of floodplain grasslands and to the fragmentation of habitats of grassland birds, while attracting walkers and outdoor recreation consumers. In such conditions, the reproduction of the Curlew has become very low. Corn monoculture has increased the risk of preying on ground-nesting birds, particularly by wild boars. The population of wild boars has become five times higher than in the 1980s. The late-mowing measures were ineffective to address the decline of Eurasian curlew, which has been constant since the 1980. The number of slopes under late mowing is insufficient. The German experience shows that to be effective, late mowing shall be conducted on extensive grassland zones of 200 ha or more, which shall be free from any disturbance. In Alsace, corn farmers would disapprove of such a strategy. Furthermore, only few areas in Alsace impose visiting restrictions which is inefficient to protect the species requiring much space (20 ha per pair).

Regarding the red kite, the complainant argues that its decline in Sundgau had been consequent upon corn monoculture.

The complainant stresses that corn monoculture prevails in Alsace, despite a slight decrease imposed by the EU CAP.

➤ **2014/6: Wind energy: Possible threats to an endangered natural habitat in Izmir (Turkey)**

*(IdA)*

This complaint was submitted in July 2014 by a citizen of Çeşme, İzmir, to denounce the exponentially increasing number of wind energy installations (WEIs) which are rapidly developing into the Çeşme Peninsula. The latter is presented as an endangered natural habitat, nurturing a biota of expansive biodiversity. The complainant stressed that the Turkish Energy market is the fastest growing in the world, with important economic benefits. However, a non-sustainable use of renewable energy sources could make these environmentally, socially and economically unviable. The complainant denounced the negative impact of uncontrolled wind-energy developments on a number of protected habitats and species, in violation of Articles 4 and 6 of the Bern Convention.

Following a request for more specific information the complainant addressed some of the questions raised by the Secretariat.

Regarding the windfarm project in Izmir, counting with already 385 wind turbines, the complainant highlighted that the latter had not been subject to an EIA, which is compulsory for this kind of projects according to the national legislation. In fact, to avoid the EIA requirements, the project developers limited the scale of the initial project to the recommended capacity, with the intention of increasing it in future. This is demonstrated by the requests, already put forward by some companies, for additional capacity increase. For this reason, other windfarm development projects have already been brought before national Courts and there have been some rulings against these. For instance, the citizens of Karaburun won a case against the installation of additional 47 turbines in a nature reserve candidate for a biosphere status.

It is however important to note that Turkey is not subject to the obligations of the Aarhus Convention.

Concerning Çeşme town, the matter was still pending before a Court, and concerned the confiscation of private lands; the intermediate rulings requested to suspend the further continuation of constructions but the private company continued implementing the construction project. The complainant informed being in the process of preparing a complaint for cumulative impacts of the windfarm project to be submitted to a National Court.

The Turkish authorities informed the Secretariat that they were collecting the necessary information for submission to the governing institutions of the Convention.

The Bureau noted that this complaint presents two major aspects: one concerns the common controversies surrounding wind-farm siting and the relations with the communities hosting windfarm close to their homes, which are already being dealt by a national Court and on which the Convention has no competence. The second is the potentially uncontrolled wind-energy development, which also poses problems in some other Contracting Parties. In this respect, a precautionary reaction seemed useful to avoid difficult situations in future.

In light of the readiness of the authorities to provide information on this case, the Bureau decided to consider the complaint as a complaint on stand-by at its next meeting. It further instructed the Secretariat to liaise with other MEAs and NGOs with a specific knowledge on wind-energy issues.

The Secretariat contacted BirdLife International and the WWF Turkey for additional information. The WWF Turkey recognised a competence and knowledge on/of wind-energy matters but not of the area subject of the complaint. It therefore provided an informal opinion noting that the complainants have not proved yet a link between the windfarms developments and a specific impact on species and habitats. However, it also noted the need for a Strategic EIA about windfarms, in view of further potential developments. WWF's position is, in conclusion, that windfarm developments implemented after good quality EIA and social assessments are a good low carbon energy solution.

The Bureau decided to give another chance to the complainant for completing its file and to re-assess the case at its next meeting, in 2016. In case there would be no evidence of a potential impact of these developments on the species and/or habitats protected under the Convention, the Bureau would close the complaint.

The report submitted in March 2016 by the complainant contains a whole inventory of the biological features of the area focussing on its habitats (with a large number of endangered natural habitat types from revised annex to Resolution No. 4 of the Standing Committee), the flora (including some endemic and rare species), and the fauna. On birds, the report says that the peninsula's terrestrial regions with islands and coastal areas host more than 200 species of birds, among which *Phalacrocorax aristotelis* and *Aquila chrysaetos*, amongst the endangered birds of the peninsula. Among the mammals, the complainant informs about the presence of three bat species



In terms of legal protection, the complainant informs that the Çeşme peninsula has been declared as National Heritage Site, predominantly at first and second levels. For this reason, following a complaint submitted by the local city assembly of Karaburun, the Ministry of Environment and Water Works, İzmir Provincial Directorate assessed the situation and produced a report (dated 2013) concluding that the cumulative effects of wind energy developments in the area would present a serious life-threatening risk for several species, and for bird populations in particular.

Regarding the extent of the wind farm development, the complainant inform that the number of installations is increasing, so as the number of licensed or under evaluation projects. It should be kept in mind that majority of the land occupied by wind turbines are natural heritage sites supposedly put under strict conservation rules.

The Secretariat didn't request a report to the national authorities.

➤ **2014/1: Presumed risk of national extinction of badgers in Ireland**

*(IdA)*

In January 2014 the Secretariat received two complaints from the Irish Wildlife Trust denouncing a possible breach of the Bern Convention with regards to i) the increased culling of badgers in Ireland, with possible detrimental impact on the population size; ii) the failure of Irish authorities to submit biennial reports due under Article 9 of the Convention in case of exceptions made to the provisions of Articles 4 to 8 of the Convention. The files so submitted were registered as a single complaint.

The Secretariat recalls that last year the Bureau of the Standing Committee to the Bern Convention devoted specific attention to the issue of complaints submitted for presumed breaches of the Convention related to species listed in Annex III. In fact, most of these complaints concern the culling of badgers and many are not well-founded on the ground.

At its last meeting the Standing Committee agreed to disseminate a guidance document on the "Admissibility of complaints related to species listed in Appendix III: the Badger as a Model". The latter has been prepared with the aim of clarifying - without prejudice to the provisions of the Convention - both the degree of protection offered by the Treaty to Appendix III species, and the reporting obligations of Parties according to Article 9.

In the complaints in object the Wildlife Trust denounced on the one hand a risk of local disappearance of the species due to the fact that the ceiling of 30 % cumulative percentage of agricultural land under capture for badgers has been exceeded and that a review of the status of the national badger population is lacking; on the other hand, the complainant considers that Ireland failed to comply with the reporting obligations set under Article 9 of the Convention.

On the latter, the Secretariat recalls that, as a general remark, if the species listed in Appendix III, it is not threatened in the territory of the Contracting Party, the population is not jeopardized by the exploitation's policy, the exploitation is monitored by the concerned authorities, and the Party has not make use of one of the prohibited means listed in Appendix IV, the Party can authorise a certain degree of exploitation without being obliged to report to the Standing Committee through the biennial reports.

However, as a follow-up to a previous complaint submitted in 2011 on the same issue, Irish authorities recognized a certain decline of the badger population in Ireland, but informed that the latter was under control and that it would not continue further. They also informed about some research programmes concerning oral and intramuscular vaccination of badgers as tools for potentially avoiding the culls (see document T-PVS/Files (2012) 33).

In the light of the above, and in order to enable the Bureau to take a decision on the follow-up to be given to the complaint, where appropriate, the Secretariat addressed a reporting request to Irish authorities on any relevant change in the population size on the national territory since 2012, as well as on the measures undertaken to monitor it; on the conservation status of the species; and on the results of the research on the vaccination as an alternative to the culls.

Unfortunately, the several reporting requests addressed by the Secretariat remained all unanswered. Recently, the Secretariat has addressed the Permanent Representation of the country to the Council of Europe.

➤ **2014/8: Presumed large-scale exploitation and marketing of protected marine shelled molluscs in Greece**

(IdA)

This complaint denounced the large-scale illegal exploitation and marketing of protected marine shelled molluscs in Greece, including species protected under the Bern convention, as well as under other regional or international conventions (including EU legislation).

A survey conducted between June 2009 and June 2011 on 219 seafood restaurants in 92 localities revealed that forty-two percent of the surveyed restaurants were serving at least one of the protected and hence illegally exploited species. Among these, the date mussel *Lithophaga lithophaga*, the common piddock *Pholas dactylus*, the giant tun *Tonna galea* are listed under Appendix II of the Convention.

The complainant observed that, given that these figures were based on the statements of the restaurateurs themselves, they were probably an underestimation of the true scale of the problem.

He also affirmed that since the publication of the study the situation remained unchanged. The complainant further stressed that the populations of all the Annex II species mentioned in the complaint were declining in the Mediterranean and in particular in Greek coastal areas. Protection through international agreements and European or national legislation was decided on the basis of a need to reduce mortality and to allow these populations to recover. Continuing intense exploitation for illegal trading in seafood restaurants will render the achievement of this goal unfeasible.

At its first assessment of the complaint the Bureau didn't receive the views of Greek authorities and decided to re-consider it as a complaint on stand-by at its next meeting, after reiterating its reporting request. Moreover, the Bureau requested the views of the European Commission on the matter.

In the report addressed end of July 2015, the national authorities confirmed that the species object of the complaint are protected under both national law and the Habitats Directive. In fulfilment of these obligations, the authorities claimed that the relevant controlling authorities have been given the right to impose deterring sanctions in case of infringements. Moreover, the Port Police Authorities conduct targeted inspections in localities where the consumption is still considered to be high. Therefore the authorities recognised that illegal consumption exists, but disagreed with the conclusions of the complainant regarding the extent of the problem, which seemed limited to few localities.

The report further mentioned a Presidential Decree which was adopted in reply to Recommendation No. 85 (2001) of the Standing Committee to prohibit the exploitation of the protected molluscs species and stop the trade in *Lithophaga lithophaga*.

The authorities concluded by ensuring their commitment to cooperate with all the stakeholders, and take all the necessary measures and actions to stop the illegal exploitation of these species.

The European Union, on its side, informed that the Commission could raise the matter with Greek authorities but would welcome more updated information on the extent of illegal activities after 2011.

With the above in mind the Bureau thanked Greek authorities for their report and agreed that more updated information from the complainant might help clarifying the issues at stake. It therefore decided to keep the complaint on stand-by, instructing the Secretariat to liaise with the complainant and the European Union well ahead the first Bureau meeting in 2016. The Bureau further asked Greek authorities to provide the opinion of the CITES management authorities for trade in relation to possible infractions.

The Secretariat addressed reporting requests to both the authorities and the complainant. Unfortunately, only the complainant replied by the preparation of the present document.

In his report, the complainant stresses that the core problem is that conservation legislation is not enforced. Without appropriate enforcement measures and the establishment of effective control mechanisms, illegal exploitation and marketing of date mussels will remain. Moreover, the complainant defends the findings of the study on which the complaint is based, stressing that the methodology used for it consisted in selecting a large number of locations (not only black-spots) and visiting all seafood restaurants that could be found in each of these locations. 219 interviews were conducted in 92 localities well covering all marine subregions of Greece. Hence, the sample is representative of the situation in the entire country, and the finding that 22.8 % of the seafood restaurants serve regularly (11.4 %) or occasionally date mussels is not an overestimate.

The complainant further submitted more updated information, not based on a new survey (such a comprehensive exercise could not be repeated) but based on data gathered through the internet by scrutinising restaurants' webpages, blogs and food reviews. It appeared that enforcement is so weak that the restaurants even publicise their menus based on date mussels and or fan mussel (served at least in three localities). The complainant concludes by acknowledging the recent efforts of the country in terms of institutional strengthening of the regulations, but still points out to enforcement and ineffective surveillance as the matters to be addressed.

➤ **2014/3: Presumed deliberate killing of birds in Serbia**

*(IdA)*

This complaint was submitted in April 2014 by the Bird Protection and Study Society of Serbia, to denounce a presumed breach of the Convention by Serbia for failing to take adequate measures against illegal bird poisoning. The latter concerned 122 birds listed in Appendix II of the Convention, including 26 white-tailed eagles, killed over the period 2007-2014 (until March).

The consequence of poisoning is, in the complainant's views, an impact on the breeding populations. The origin of the poisoning is direct/indirect, mainly through carbofuran and feeding with poisoned seeds and carcasses. Almost all dead individuals of white-tailed eagle were found on intensively managed agricultural land. The complainant considers that the authorities are failing to adopt and enforce sufficiently strict administrative and legal measures to discourage poisoning of wild birds.

The Secretariat stressed that the complaint had been notified to the authorities already in 2014, but they requested a delay in order to identify the national Special Focal Point for illegal killing of birds.

The national report addressed in March 2015 confirmed the information sent by the complainant, including the type and nature of poisoning. It further informed about a dedicated meeting of all relevant authorities (in February 2015) to devise a set of immediate actions which had however not been undertaken yet. There were also some inspections, and the referral to a person to the Office of the Public Prosecutor (scheduled for 17 April 2015), although most of the offenders remained non-identified.

The legal regime for dealing with wildlife crimes in Serbia is criminal law, but the report provided little information on enforcement and prosecution. However, the authorities ensured of their commitment to put in place proactive prevention measures through awareness on the prohibition of use and trade of carbofuran, as well as to ensure that the residual stocks of carbofuran from individual users are destroyed.

The Bureau welcomed the efforts of Serbia for addressing the matters of the complaint, and praised the nomination by the country of a Special Focal Point for illegal killing of birds as a first step towards the full implementation of the Tunis Action Plan. However, it also noted that the response to such a serious threat had been guided by the urgency of the situation, lacking a more structured approach. With this in mind, the Bureau decided to re-consider this complaint as a complaint on stand-by at its first meeting in 2016, and invited Serbia to attend the meeting of the Group of Experts on the conservation of birds under the Bern Convention (October 2015), and to report to the Group on the activities and actions planned as a follow-up to this complaint.

The authorities reported to the Group of Experts on the conservation of birds informing about the results of the toxicological analysis carried out on the birds found dead in 2014, confirming that the deaths were caused by carbofuran. The presumed offenders, were finally identified and referred to the Public Prosecutor's Office. Still, there were some challenges that the authorities had to face for the full implementation of a comprehensive strategy against illegal killing of birds. These are the lack of specifically trained human resources (at all levels of the enforcement chain), the lack of financial resources, the need to improve communication and co-operation between all competent bodies and stakeholders, and a long judicial *iter* which makes the issuing of decisions very slow. The delegate explained how these challenges are starting to be addressed, and presented some of the cases which were being judged before national courts. He further noted the support of NGOs initiatives in this field. Namely he informed about a campaign to be launched by WWF Serbia for the responsible use of pesticides, which follows the legal provisions aimed at prohibiting the use of carbofuran. Another good initiative which received support from the authorities was a campaign for the conservation of turtle doves.

In the absence of the complainant, and noting the lack of an updated report, the discussion was short, with some Parties suggesting that Serbia looks at experiences of other countries having already worked on a long-term approach to illegal killing of birds. Moreover, the delegate of Hungary informed that a new LIFE + project (a follow-up to the present Helicon LIFE+ project) – if approved for funding by the EU, should also be implemented in North Serbia. The Group referred the case to the Bureau.

The Secretariat addressed reporting requests to both the authorities and the NGO. Only the authorities replied, with an updated report informing that some legal provisions were amended/adopted in order to meet the requirements of the Bern Convention and the Tunis AP. A meeting with relevant stakeholders (including CITES Unit and Inspection, the public prosecution office and the NGOs) took place in February this year to assess the situation and prepare the report for the Bureau.

Moreover, a draft Protocol was prepared for possible adoption by the Government of the Republic of Serbia. The Protocol identifies illegal killing of birds as a major threat to birds and their habitats. It aims at implementing joint actions and promoting cooperation between authorities and organisations involved in the fight against illegal killing of birds. The Protocol pursues four objectives:

- Guiding common action, promoting good practices and cooperation;
- Enhance wild bird protection and reduce the rates of undetected cases;
- Develop a common understanding on bird conservation vs illegal killing of birds
- Improve the effectiveness of investigation and prosecution phases.

Moreover, the report informs that, since 2014, Serbia is conducting a project which aims at the preparation of a National Action Plan on the sustainable use of plant protection products, establishing systems for regular technical inspection of pesticide application equipment.

Furthermore, the report gives some insights of campaigns and other awareness raising activities organised by the NGOs with the support of the authorities, on public debates organised to reach local public, and on some activities targeting schools.

Finally, the report informs that two draft laws on accession and ratification of the AEWA and EUROBATS Agreements were adopted by the Government of the Republic of Serbia and sent for further procedure in Parliament.

### **To be assessed at the September Bureau meeting**

- 2013/5: Presumed impact of a construction of Overhead Power Line (OHL) in an environmentally sensitive area in the Lithuanian-Polish borderland
- 2011/5: France / Switzerland: threats to the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)

## 1.4 Other complaints

### ➤ 2015/2: Possible impact of wind-farm developments on bats (“the former Yugoslav Republic of Macedonia”)

*(IO replaced by Ida)*

In February 2015 the Secretariat of the Bern Convention received a complaint submitted by the NGO Bat Study Group/Bird Protection, alleging a presumed breach by “the former Yugoslav Republic of Macedonia” of the Convention. According to the complaint the breach would result from a recent wind-farm development near the village of Bogdanci, located in the very close vicinity of Dojran lake, an important candidate Emerald site and an Important Bird Area.

The complainant considers that the Bogdanci wind farm development represents a threat for not less than 15 bat species occupying the area where the farm was built listed in Appendix II of the Bern Convention. Some of these bat species are also listed in IUCN’s Red List. Moreover, a considerable number of migratory birds of prey present in the area are also listed in the Bern Convention Appendices and are equally threatened as the wind farm is situated only several kilometers from the main migratory pathway Morava-Vardar.

The complainant further explains that the ESIA prepared ahead of the wind-farm development does not mention bat species at all and that a number of protected bird species have not been relevantly studied. As a result, the operational monitoring of the impact of the wind farm on the fauna does not concern the bat species in particular, as they are not mentioned in the ESIA study.

Due to the workload of the authorities for the organisation of the Mavrovo on-the-spot appraisal last year, it was agreed to consider this complaint at the first Bureau meeting in 2016.

In the meantime, the Secretariat recorded EUROBATS interest in providing an opinion on the file. However, the latter didn’t reach the Secretariat by the preparation of the present report.

In response to the specific reporting request sent by the Secretariat, the national authorities submitted their report in February 2016.

The report describes the Bogdanci Wind Farm (an ELEM’s project) which underwent a thorough environmental and social impact assessment (ESIA) in accordance with both the national law and the donors’ requirements (EU CARDS project).

According to the authorities, the ESIA took both avian fauna and bats into account and included field survey and extensive research on scientific literature. In that context, detailed and structured environmental management and monitoring plan were developed and adopted by ELEM as part of project development documents.

A pre-survey assessment was also conducted to identify the species as well as the landscape features used by bats that were potentially at risk, and field surveys took place in spring and autumn seasons in 2009. The ecological assessment identified a comprehensive list of bats species that could be subject to disturbance and displacement during construction, but this impact was considered to be a short term disruption with no significant impact.

Moreover, a project’s Environmental Management and Monitoring Plan (EMMP) to eliminate adverse environmental and social impacts, offset them, or reduce them to acceptable levels has been developed as part of the ESIA process. The whole ESIA package was publically disclosed in 2010 and a public hearing was organised and held in Bogdanci municipality as part of the consultation process. The decision for approval was issued after all the necessary steps had been completed.

The EMERALD site Dojran Lake, also designated as Important Bird Area (IBA) and Ramsar Site, was also taken into consideration during environmental appraisal of the wind farm Bogdanci, but in fact the agricultural areas, including the Project’s site, are considered as not relevant for migratory species. In

line with the above, the impact in relation to breeding bird species is predicted as unlikely to be significant both in terms of disturbance during construction and operation. As for the collision risks, an assessment of the potential for collision with the wind turbines predicts that the key bird groups recorded during the surveys were reported as flying mostly above 150 meters (the maximum rotor height), and thus exhibiting avoidance behavior. The assessment of the project was also undertaken in accordance with EU Guidance on the Assessment of plans and projects significantly affecting Natura 2000 sites.

Regarding post-construction monitoring, ELEM has initiated the procedure for the nomination of a qualified consultant to perform the requested three-year post-construction / operational monitoring, that is expected to start in spring 2016.

The authorities conclude by stressing that the complainant didn't complaint during the ESIA phase, and co-signed the national reports submitted to EUROBATS.

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

Proposal of the Secretariat:

- Recommendation No. 96 (2002) on conservation of natural habitats and wildlife, especially birds, in afforestation of lowland in Iceland
- Recommendation No. 144 (2009) on the wind park in Smøla (Norway) and other wind farm developments in Norway
- Recommendation No. 110 (2004) on minimising adverse effects of above-ground electricity transmission facilities (power lines) on birds
- Recommendation No. 176 (2015) on the prevention and control of the *Batrachochytrium salamandrivorans* chytrid fungus