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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

35th meeting
Strasbourg, 1-4 December 2015

**2ND MEETING OF THE SPECIAL FOCAL POINTS ON
ILLEGAL KILLING, TRAPPING AND TRADE OF WILD
BIRDS**

Madrid, Spain, 24-25 February 2015

**Working Session 3:
identification and standardisation of gravity factors, and
preparatory work for the elaboration of sentencing guidelines**

**- ANALYSIS OF RESPONSES TO BERN
CONVENTION SENTENCING QUESTIONNAIRE -**

*Compilation prepared by
Mr Nicholas Crampton, Moderator of the Working Session 3*



2ND MEETING OF THE SPECIAL FOCAL POINTS ON ILLEGAL KILLING, TRAPPING AND TRADE OF WILD BIRDS Implementing the Tunis Action Plan 2013 – 2020

Working Session 3: Identification and standardisation of gravity factors, and preparatory work for the elaboration of sentencing guidelines.

ANALYSIS OF RESPONSES TO BERN CONVENTION SENTENCING QUESTIONNAIRE

The purpose of the Questionnaire was to identify the range of sanctions and penalties that are currently available in legislation affecting wildlife and especially that implementing the Bern Convention. To have some idea which sanctions are available, and of the number of jurisdictions in which they are available, is a prerequisite to being able to formulate principles applicable across those jurisdictions which may influence their use. It also sought to reveal the extent to which ‘administrative measures’, ‘on the spot’ fines or other sanctions are imposed other than through a court or judicial process. An analysis of the replies is shown in the table below, which therefore seeks to display **TYPES** of sanction, penalty or order **ONLY**, so as to show which types of sanction are in use for wildlife offences. (Amounts shown are **maxima**.) It is not a full account of each country’s often complicated enforcement structures, nor is it intended to undertake a detailed comparison among different jurisdictions. Also, the indication that a type of sanction is available, and the amount shown, means that *such is available for at least ONE relevant type of offence*: specific sanctions (except fines) are not always available for all relevant offences. Some countries also have additional disqualifications and prohibitions.

Introductory Notes

1. **Use of words** - because of the varied use of words and possible confusions in translation, in the table below the following words or initials have the meanings given below:

‘offence’ – conduct prohibited in legislation for which any form of penalty or sanction is to be imposed by order or act of any official or judge.

‘offender’ – a person who commits an ‘offence’.

‘organised group’ or ‘OG’ – a number of individual ‘offenders’ acting together to commit an ‘offence’.

‘administrative measure’ or ‘AM’ – any form of order, penalty or sanction imposed by an official other than a court or judge at a court hearing.

‘crime’ – an offence which is subject to court (‘judicial’) proceedings where the penalty or sanction is imposed by a judge.

‘sentence’ – any form of order, penalty or sanction which is imposed for a ‘crime’, ie. by a court.

‘restriction of liberty’ or ‘RL’ – a ‘sentence’ requiring an ‘offender’ to do or refrain from doing anything while retaining his/her liberty to live in the community.

‘fully protected species’ or ‘FPS’ – any species which is fully protected by legislation at all times.

‘legally hunted species’ or ‘LHS’ – any species which is partially protected by legislation but which may be hunted in accordance with regulations.

2. I hope I have correctly identified from the Replies the maximum sanctions that are available. *Representatives attending the Meeting are respectfully invited to check, and let me know before the Working Session, if I have made a mistake.*

Country or jurisdiction	Administrative Measures or Sentences – MAXIMUM available sanctions and penalties									Guidance for AM or Sentence?
<i>Whether AM or judicial proceedings</i>	<i>Imprisonment for at least ONE offence (if suspended – ‘SI’)</i>	<i>Fines – individuals (in Euros)</i>	<i>Fines - Legal persons (in Euros)</i>	<i>Forfeiture or confiscation</i>	<i>Compensation or other act for restoration</i>	<i>RL - Probation or supervision</i>	<i>RL – Curfew or home detention</i>	<i>RL – Community Work</i>	<i>RL – orders banning from specified place</i>	<i>Does jurisdiction have guidance for judges for any offences or wildlife?</i>
FYR Macedonia AM only, tho’ Court for prison sentence	Yes, for use of prohibited device and illegal killing some specified mammal species only. SI - No	AM only 500 – 700 €	AM only 3300 – 5000 €	Yes - AM	Yes: specified amounts for illegal killing some mammal species	No	No	No	No	No
Poland Court only	5 years LHS, and trafficking FPS. 1 or 2 years FPS. SI - Yes	Minor offence 1220 €. Major offence 488€ x 540 days	Minor offence 1220€. Major offence 488 € x 540 days	Yes	Yes	Yes	Yes	Yes	Yes	No
Turkey AM or Court sentence	Between 2 – 5 years if act damages the ecological balance. CITES 1 – 6 years SI - No	AM c70 – 100 € + species’ specific compensation. CITES 200 – 7000 €	AM c70 – 100 € + species’ specific compensation. CITES 200 – 7000 €	Yes	Yes: specified amounts are set according to species	No	No	No	No	Yes – Central Hunting Commission reviews specified compensation levels for species.
Romania AM and Court	Between 3/6 months – 3 years (but CITES & trafficking not specifically included). SI - Yes	c.3,300 €	c. 22,000 €	No	Yes	No	No	Yes – as alternative to fines	No	No
Hungary AM and Court	‘Strictly protected’ species or if ‘theoretical values’ exceed specified amounts, Max 3 or 5 years. SI - Yes	‘Theoretical value’ of ‘protected’ species decides amount	‘Theoretical value’ of ‘protected’ species decides amount	Yes	Yes	Yes	Yes	Yes	Yes	Yes believed acceptable to judiciary, not yet for wildlife. ‘Theoretical values’ pre-determined for each species.

France Court	LHS – 2 or 4 years. FPS – 1 year, but 7 years for trafficking or CITES by OG <i>SI - Yes</i>	LHS – between 1500 – 60,000€ FPS – between 15,000 – 30,000€. (CITES - 150,000€, 750,000€ for OG)	5x fine for natural persons (Also a range of civil prohibitions.)	Yes	Yes	Yes	No	Yes	No	Yes
Slovak Republic AM and Court	LHS - Between 4 – 10 years. FPS - 3-8 years for trafficking/CITES or where ‘social value’ exceeds 2660€ <i>SI - Yes</i>	FPS – c.6,600 or c.10,000€ LHS – as above	FPS – c23,000 or c33,000 € LHS – as above	Yes	Yes	Yes	Yes	Yes	Yes	No but ‘social values’ predetermined for each species.
Cyprus (SBAs follow RoC) AM and Court	3 years (6yrs for second offence) <i>SI - Yes</i>	17,000 € (x2 for second offence). AM 850 € for use prohibited device	17,000 € (x2 for second offence)	Yes	No – but fines go to Game and Fauna Service	No	No	No	No	No
Croatia AM and Court (Also other civil disqualifications)	5 years (killing only) <i>SI – Yes</i>	c.3900 or 6500 € AM for trafficking	c.26,000 or 65,000€ AM for trafficking	Yes	Yes	Yes	Yes	Yes	Yes	No
Albania AM only	No	c.215 – 815 €	c.215 – 815 €	No	Yes	No	No	No	No	No
Italy AM and Court	1 year (2 yrs for 2 nd CITES offence) 8yrs if no hunting licence. <i>SI – Yes</i>	1549 – 6197€ if no licence 10,000€ CITES 77468 € (2 nd offence 103291 €)	1549 – 6197€ if no licence 10,000€ CITES 77468 € (2 nd offence 103291 €)	Yes	Yes	No	No	No	No	No
Malta	1 year, 2 years for 2 nd offence <i>SI - Yes</i>	c.2300 – 5000€. For 2 nd offence, c.4600 – 10,000 €	c.2300 – 5000€. For 2 nd offence, c.4600 – 10,000 €	Yes – also licence suspension or revocation	Yes	Yes	No	Yes	No	No (Judiciary willing to know what sanctions used elsewhere.)

Georgia AM and Court	5 years SI - No	130 – 870 €	130 – 870 €	Yes	An extra 5 x administrative fine payable for Red List species, not allocated to conservation.	No	No	No	No	No
Czech Republic AM and Court	2 – 5 years, inc. increase sentence for repeat or OG offending. (But 1 year if ‘negligent’.) 8 years for ‘international OG’ trafficking. SI - Yes	c.3,500 – 17,500. c.52,000 for trafficking, CITES. Some x2 for repeat offending	c.17,500 – 70,000, inc ‘individual entrepreneurs’. Some x2 for repeat offending	Yes	Yes	No	No	No	No	No
Portugal AM and Court	6 months – 3 years SI - Yes	750 – 3740 € €. Also fines calculated by number of days. CITES - 37500 €	44,890 €, CITES - 2.5million €	Yes	Yes	Yes	Yes	Yes	??	No

A number of features may be found in the above analysis which it may be useful to note when attempting to identify principles able to assist in enforcement across the range of jurisdictions. These include:

1. The extremely wide range in maximum financial sanctions for natural persons– do these reflect the levels of wages/incomes?
2. Substantial increases in maximum financial sanctions for legal persons.
3. The wide use made of AM, fixed or ‘on the spot’ fines.
4. Generally sanctions for CITES are higher than for other wildlife offences.
5. Some attempts at grading sanctions to conservation status of species.
6. In some jurisdictions sanctions for ‘hunting offences’ are higher than for ‘conservation offences’.
7. Some recognition of the role of ‘OG’ and the trans-national nature of offending.
8. High levels of maximum prison terms, generally 2 – 5 years.
9. Widespread availability of suspended prison terms (this allows the potential for additional RL to be imposed).
10. RL sanctions are not fully available in the majority of jurisdictions.
11. Forfeiture and some form of compensation almost always possible.
12. Some use of additional civil prohibitions and disqualifications.
13. Very limited use of any form of ‘judicial guidance’. Representatives attending the Working Session are welcome to draw out or mention other points.

Nicholas Crampton, Moderator, Working Session 3: Identification and standardisation of gravity factors, and preparatory work for the elaboration of sentencing guidelines, 2nd Meeting of the Special Focal Points for Illegal Killing of Birds, Madrid, February 2015.