

EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

Finland

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Natural habitats and their fauna and flora

Habitat protection

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

The Nature Conservation Act (NCA, 1996, with later amendments) is the legal framework for protection of habitats and species. Besides the NCA, there is no specific regime of conservation measures for those habitats and species protected in the SCI and SPA areas. Instead, protection is effected through a combination of site-specific measures (areas protected under the NCA), species conservation (also under the NCA) and permit procedures, mainly under the Environmental Protection Act, EPA, and the Water Act, WA.

The NCA has transposed into Finnish law the Habitats Directive and the Birds Directive, as applicable to species of flora and fauna other than those specified in section 5 of the Hunting Act (i.e. game animals, including e.g. certain birds and big carnivores such as brown bear, wolf, lynx and wolverine, and non-protected animals; see 1.B.1. below). The Directives have been, naturally, taken into consideration in the Hunting Act. As regards fish species, the NCA lists a number of protected, non-commercial species (none of them included in Annex I of the Habitat Directive). Other fish are by definition commercial, the exploitation of which is regulated by the Fishing Act. In fishing operations and related activities, the provisions on environmental crime set down in Ch. 48 of the Penal Code are to be observed. Through the Penal Code, thus, the Fishing Act indirectly refers to the NCA.

NCA includes a specific chapter (ch. 10) on the Natura 2000 network.

“A site included in the Natura 2000 network shall be protected in a manner complying with its conservation objectives without delay and within six years of the Commission or Council having approved it as a site of Community interest. A bird sanctuary referred to in section 64, paragraph 1, subparagraph 1, shall nevertheless be placed under protection immediately after the Commission has been notified of the site.” (NCA, Section 68, cf. also sec. 69 concerning compensation for deterioration of the network).

However, the above quoted section does not *per se* provide any instruments, by the use of which the necessary protection would be achieved. Hence, protection is based on the instruments provided elsewhere in the NCA or other relevant legislation.

Ch. 10 of the NCA includes also sections 65 and 66, which transpose Article 6, paragraphs 3 and 4, of the Habitats Directive into Finnish law. However, these mechanisms, providing a system of assessment of impact and a ban on significant adverse impact on ecological values protected by the Natura designation, are effective only in so far as a permit or ratification of a plan is necessary. Moreover, the duty of assessment and a ban on significant adverse effect are not mechanisms apt to execute the protection scheme; they are means to control negative effects caused by projects or plans threatening the integrity of the Natura 2000 site. To sum up, Article 6, paragraphs 1 and, especially, 2, have not been fully and effectively implemented into Finnish law. Still, NCA provides several instruments to carry out the protection schemes.

Most often, protection will be implemented through the designation of a nature reserve. NCA recognises three types of nature reserves: 1) national parks, 2) strict nature reserves (“natural parks”) and 3) other nature reserves. The two first types of protected areas can be founded only on State-owned land (of course, acquisition of land to the State is possible by voluntary or compulsory purchase), and they cover typically large areas. Other types of nature reserves can be designated also on private land, but normally only on application or with the consent of the landowners; only if the area falls within the bounds of a nature protection programme adopted by the Council of State (the Cabinet), the regional state environmental authority may designate a nature reserve on private land against the will of the owner.

NCA (section 13) provides protection provisions for national parks and strict nature reserves. Any action altering the natural surroundings is prohibited:

- 1) construction of buildings and other fixed installations, and the building of roads
- 2) extraction of sand and stone materials and minerals, and any action that damages the soil or bedrock
- 3) drainage
- 4) removal or destruction of fungi, trees, bushes and other plants or parts thereof
- 5) capture, killing or disturbance of wild vertebrates, destruction of nests, burrows, etc., and capture and collection of invertebrates
- 6) any other action which may have a detrimental impact on the natural conditions and the landscape, or on the preservation of fauna and flora.

Subsequent sections of the NCA allow certain derogations from general protection provisions (sec. 14; sec. 15 contains derogations subject to special permit from the authority in charge of the site; sec. 16 provides certain regional derogations e.g. on grounds of national defence, hunting rights or the practice of indigenous occupations by the Sami population). Thus, *e.g.*, the construction, restoration and repair of buildings, installations and paths necessary for the site management, picking of berries and mushrooms, angling and ice fishing are permissible, as well as reindeer farming in the North of the country .

Other types of nature reserves on State-owned land may be designated by a Governmental Decree. The Decree shall contain protection provisions, including derogations, which shall be formed after the model provided in sections 13-16, as applicable (section 17, NCA).

By contrast, if a nature reserve is founded on private land, the decision by the regional state authority (Centre for Economic Development, Transport and the Environment) pursuant to section 24 of the NCA, shall include the necessary provisions on the protection of the reserve and, as necessary, on its management. The decision may also include provisions prohibiting or restricting free passage in the reserve or part thereof, provided this is deemed necessary for the conservation of plant and animal species within the area. The decision shall not be issued until the landowner and the authority are agreed on the reserve's protection provisions and the landowner's compensation. However, in the case where a nature reserve on private land will be designated against the will of the landowner(s), the protection provisions instituted are not to restrict land use to any greater degree than is entailed by the nature conservation programme.

As mentioned, if the protection of a Natura 2000 site is effected by a nature reserve on private land, the landowner's application or at least consent is, as a rule, presupposed. Consent is a matter of agreement between the authority and the landowner, who may demand personal derogations from protection provisions. Obviously, there is a risk that the conservation objectives of the site will not be met if wide derogations are granted. It should be clear that, though voluntary protection is cost-free and therefore desirable to the State, protection derogations entailing a hazard to the conservation objectives do not meet the demands of Article 6, paragraph 1, of the Habitats Directive and section 68, NCA. Some interesting cases concerning this issue have been pending at the Supreme Administrative Court. One of them was published very recently (Finnish Supreme Administrative Court KHO:2010:63): in this case the Court found that the protective provisions based on the agreement between landowners and the regional environmental authority did not suffice to protect the integrity of the site (especially hunting of game birds was allowed during 20.8.-22.8. and from 1.9. onwards, obviously causing disturbance to the protected birds the SPA area was hosting). If the protection provisions do not meet the standard presupposed in the Habitats Directive and the landowners are not willing to give their consent to the necessary restrictions, it may be necessary to acquire the site to the State and then to designate a nature reserve on State-owned land with sufficient protection provisions.

Besides provisions concerning protected areas – nature reserves – NCA includes also instruments enabling protective measures on minor objects. Pursuant to ch. 4 of the Act, certain natural habitat types, such as wild woods rich in broad-leaved deciduous species, sandy shores in their natural state, coastal meadows and treeless or sparsely wooded sand dunes, may be protected. Protection of these habitats is effected through a site specific decision by the regional state authority.

The Council of State decision proposing a site as an SCI or notifying a site as an SPA, also indicates the relevant Act on which the protection shall be based. Under the NCA, protection shall be implemented through a nature reserve or, in some cases, a protected habitat area. For certain areas, protection shall be based on, for instance, the Water Act, the Soil Extraction Act or the Forest Act. However, under none of these Acts protection provisions as such may be issued – the two first-mentioned Acts include a permit system and the Forest Act only a notification system for logging. To conclude, this means that the protection of the area has been left at the mercy of a permit or a notification system and the above-mentioned sections 65 and 66 of the NCA (assessment duty and ban on permitting significant adverse effect). If no permit is

needed, the ban is not effective. The result hardly corresponds to the requirements set in Article 6, paragraphs 1 and 2, of the Habitats Directive.

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

The Ministry of the Environment is responsible for the supreme guidance and supervision of nature protection. Regional state authorities – since January 1st, 2010, Centres for Economic Development, Transport and the Environment (ETE-Centres) – are responsible for supervision of e.g. habitat protection measures. Also municipal Boards have some general promotion tasks, but their position is not as significant as that of the Centres.

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

Pursuant to section 57 of the NCA, the ETE-Centres have powers to take coercive measures against parties that act against the NCA. Should anyone fail to observe provisions and regulations laid down in or by virtue of the NCA, or act contrary to them, the Centre can forbid that person from continuing or repeating the offence or instance of negligence and require that he corrects the unlawful situation or redress his negligence under threat of fine or suspension, or issue threat of having the necessary measures taken at his expense. The ruling of the Centre shall be observed irrespective of appeal, unless decided otherwise by the Administrative Court. This procedure can be initiated by the Centre itself, by an affected party, by NGOs whose purpose is to promote nature conservation or environmental protection, or by municipal authorities.

This implies that sanctions against infringing on habitat protection measures are mainly administrative. However, infringements against the Act or Decree or Regulations are also punishable, as specified in section 58 of the NCA, with a reference also to the Penal Code, ch. 48 concerning environmental offences. Sometimes the offender may be under an obligation to compensate the damage, too, but in practice the system is based on administrative sanctions. In all, the coercive measures are effective, but Finnish legislation fails explicit rules presupposing compensation on destroyed ecological values (e.g. the duty to restore a habitat may not be effective, unless the authority could stipulate that the violator shall create a comparable habitat elsewhere to compensate the definitive loss of the values of the finally destroyed habitat).

The insignificant part of criminal procedure is illustrated by the number of criminal cases. In 2009, charges were brought in only 59 environmental cases out of a total number of some 66 000 criminal cases heard by the Finnish first instance courts.

Administrative coercion can be directed at natural and legal persons. The Penal Code provides rules on corporate criminal responsibility: a corporate fine can be imposed on legal persons.

During service work at an oil refinery, 300 m³ of oil escaped and was partly absorbed into the ground. A small amount ran into the sea. Three company officers were sentenced to fines for degrading the environment by negligence. The oil company was sentenced to a company fine of 500 000 euros. (*Finnish Supreme Court KKO:2008:33*).

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat-directive is carried out without an appropriate assessment? Does it make a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

The assessment of environmental impact is a prerequisite for the environmental permit required for many activities. Neglect to assess environmental impact is not criminalized, but shall lead to rejection of the permit application. Operating a polluting activity without the required administrative permit is subject to administrative coercion, and it is also an offence by itself. Polluting or deteriorating the environment is a criminal offence under the Penal Code Chap. 48. Also failure to comply with permit provisions or provisions issued by supervising authorities under the NCA are criminalized.

The permit for an existing coal-fired 945 MW power plant was revised by the permit authority, which concluded that the plant would not affect a SCI- and SPA-area 3,5 km off in such a manner that effects needed to be assessed. Upon an appeal by the regional supervising authority, SAC also found that foreseeable effects of airborne pollution from the plant were negligible and no assessment was needed. (*Finnish Supreme Administrative Court KHO:2006:101*)

See also the SAC case (*KHO:2005:69*) referred to under paragraph I.B.3

As mentioned above, sections 65 and 66 of the NCA include corresponding provisions to the Habitats Directive, Article 6, paragraphs 3 and 4. The authority in charge of granting a permit or approving a plan shall see that the assessment of impact is carried out, if it is not excluded that the project or plan can have significant adverse effect on the ecological value of a Natura 2000 site. If the assessment threshold has been exceeded, the authority may not grant a permit or approve the plan without a proper assessment. If the project or plan is implemented without a permit or approval, the ETE-Centre shall act by using administrative coercion in the way described above (section 57 NCA). If, on the other hand, a permit has been granted or plan approved without a relevant assessment, the permit or plan approval is subject to appeal in an Administrative Court. If the ETE-Centre does not take necessary measures, its (negative) decision can be appealed by e.g. relevant NGOs or authorities to an Administrative Court.

I.A.5. Conduct falling under article 3(h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy and paste or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an

infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

A revision of the existing legislation has been carried out to find out whether the present legislation is sufficient to implement the Eco-crime Directive or not. Only some minor adjustments are called for.

Pursuant to ch. 48, section 5, subsection 1, point 1, of the Penal Code, a person who intentionally or through serious (“gross”) negligence unlawfully destroys or impairs a natural area, an animal, a plant or another natural object protected by the NCA or protected, restricted or placed under an injunction based thereon, shall be sentenced for a nature conservation offence to a fine or to imprisonment for at most two years. Section 58, subsection 2, point 1, provides correspondingly a fine sentence for violator of a provision or a regulation on nature conservation laid down in or by virtue of the NCA.

A corporate fine consisting of a lump sum (850 – 850 000 euros) can be imposed on legal persons.

At least until recently, it has been clear to the Finnish Courts that the use of administrative coercive measures to rectify a violation or restore the lawful state of affairs is not an obstacle to imposing criminal sanctions. The case-law by the European Court of Human Rights, however, has indicated that (monetary) administrative sanctions and fines would be against the ban on double jeopardy in Article 4 of Protocol No 7¹ (see e.g. *Zolotukhin v. Russia*, judgment of the Grand Chamber 10.2.2009) In spite of this, we would be inclined to consider that a criminal sanction is lawful even if an administrative threat of fine has been imposed to rectify the very same violation.

Penal legislation contains certain provisions, which enable waiving of punishment (by a Criminal Court) or waiving charges (by the Public Prosecutor). The criteria are based, on the one hand, to the offence (the severity etc.) and, on the other hand, to the offender (e.g. age, specific personal circumstances).

Species protection

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

Ch. 6 of the NCA (sections 37-49) includes provisions on protection of species. The provisions shall apply to all naturally occurring animal and plant species (including also mushrooms and

¹ Paragraph 1 of the Article reads as follows: “No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

fungi) in Finland, with the exception of game-animals² and non-protected animals³ (section 5 of the Hunting Act) and commercial fish species. However, provisions on CITES-species (section 44) and Habitats Directive species (section 49) apply to all the species referred to in these sections.

Pursuant to section 38 NCA, all mammals and birds within the sphere of application of NCA are protected. Other animal species may be put under protection by Decree.

Protection provisions for animal species (sec. 39 NCA) prohibit the deliberate killing and capturing of individuals of protected species as well as the deliberate disturbance of individuals during breeding, in important resting places during migration, or on any other sites of significance to the species' life cycle. Also, the appropriation, removal or deliberate destruction of eggs and other developmental stages, is prohibited.

Section 42 NCA deals with protection of plant species. If a wild plant species becomes endangered or its protection otherwise proves necessary, the species can be placed under a protection order by Decree, either throughout the country or in a specific part thereof. The picking, collecting, cutting, uprooting and destruction of a protected plant species or part thereof is prohibited. The same shall correspondingly apply to the seeds of any protected plant species.

NCA also provides certain means to protect habitats of endangered species. Any species at imminent risk of extinction can be placed under a strict protection order by Decree. The ETE-Centre may by its decision pursuant to section 47 of the NCA prohibit the deterioration and destruction of a habitat important for the survival of such a species. The same applies to so-called Environmental Liability Directive species. The Act also includes an *ex lege* effective ban to destruct and deteriorate breeding sites and resting places used by specimens of animal species referred to in Annex IV(a) to the Habitats Directive (see section 49, with provisions also on plant and bird species and on derogations based on the relevant Directives).

By virtue of section 37, subsection 1, of the Hunting Act a game animal species must be declared protected for a specified period or until further notice if required to preserve the population or to safeguard reproduction of the species. Provisions concerning closed seasons and the protection of game species are issued by Decree. Derogations from general closed seasons may be made for the benefit of the permanent residents of the locality. Game may not be hunted or harmed during a closed season nor may mating, nesting, or the young to be disturbed.

General closed seasons for game animals are provided in section 24 of the Hunting Decree. Just to pick up two examples, closed season for wolf in the reindeer management area is April 1 – September 30 and for many waterfowl species from January 1 to 12.00 noon of August 20. Wolf outside the reindeer management areas, bear, otter, wolverine, lynx and harbour seal (*Phoca vitulina*) are always protected. However, the Hunting Act allows the Ministry of Agriculture and

² Including i.a. great carnivores (see I.A.1.), beavers, rabbit, red squirrel, grey seal, moose, some geese species, some grouse species, wood pigeon etc. etc.

³ E.g. voles, brown rat, house mouse, hooded crow, magpie and domestic pigeon.

Forestry to issue a special permit to kill protected animals and the Hunting Decree provides the game management district to grant exceptions to general closed seasons. For wolf, bear, otter and lynx, exception can be granted on grounds corresponding to Article 16 of the Habitats Directive (no other satisfactory solution, no interference with maintaining of favourable conservation status, specific grounds). In addition, there are certain periods during which specified quotas, laid down by a decision by the Ministry, of these animals may be hunted during specified terms (e.g. wolf outside the reindeer management area November 1 – March 31).

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

See I.A.2. above.

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

Public interest in nature conservation is largely directed towards spectacular or emotionally appealing species and towards landscapes or habitats with aesthetic values. Protection enforcement is, to some extent, affected by this. Traditionally, protection of bird species has a high priority. Protection of the big carnivores, and of smaller "pest" animals, is subject to strong conflict between the conservation interest and the hunting / extinction interest.

Conservation focus has shifted over time, from species protection to habitat protection. This historical trend has been upset by the Habitat and Birds Directives, which offer a high degree of protection to certain species. Some of the Directive species are a major concern of enforcement authorities and courts, such as the Siberian Flying Squirrel (*Pteromys volans*). The Moor Frog (*Rana arvalis*), though poorly known, seems to be common in southern and central parts of Finland. The unconditional protection status given these species by the Habitat Directive leads to a conflict between protection status and perceived protection needs. Some other Directive species are not perceived to be endangered, and are given less attention. *E.g.*, the Whooper swan (*Cygnus cygnus*) has lately spread over the whole country and the population is increasing.

A recent example of shifting focus is the Great Cormorant (*Phalacrocorax carbo*). The species first bred in Finland in 1996 and since, the breeding population has increased rapidly. In 2009, breeding stock was an estimated 16 000 pairs. During the population growth stage, conservation authorities considered the species to be protected under the Birds Directive (Art. 1 and 5), while fishermen and parts of the public considered cormorants as pests. In 2010, the regional environmental authorities have granted licenses to destroy cormorant eggs and to kill adult birds in order to limit perceived damage to fish stocks.

The Saimaa Ringed Seal (*Phoca hispida saimensis*) is an endemic fresh water seal found only in Lake Saimaa in the central-eastern Finland, and its population is at the moment some 260 individuals. There are many court cases from the 1980s and 1990s concerning e.g. shore area

planning and the necessity to restrict cottage building in the neighbourhood of breeding sites and resting places of the seal.

The local municipality had approved a landowner's shore plan allotting 12 recreational building lots to a property on an island in Lake Saimaa, which had been designated a SCI-site to protect the Saimaa seal population and which also was designated as a nature protection area in the regional land use plan. The SAC found that the project was liable to have a detrimental effect on the conservation status of the seal and repealed the decision. The land use plan could not be approved without assessing the effects on the SCI. (*Finnish Supreme Administrative Court KHO:2005:69*)

At the moment, attention is on fishing restrictions – seal pups drown in fishing nets, and there is a debate on whether net fishing (in some water areas for the critical time of year) should be banned by a Ministerial Decree or by voluntary agreements with the water area owners. Until now, fishing has been restricted by agreement. In the favourable (snow rich) winter of 2010, reproduction was normal and the net fishing restriction seems to have been sufficient.

Quite a lot of attention was paid to White-backed Woodpecker (*Dendrocopos leucotos*) especially during drafting of the Natura 2000 network in 1990s. This woodpecker living in old-growth forests is very rare in Finland, but many voices were raised against its tight protection, because it should be quite common beyond the eastern border (in Russia). Fear of protection caused some regrettable actions where the landowners logged their old forest in order to prevent a potential protection of the biotope of the woodpecker.

At the moment, maybe the best-known animal in connection of land use planning and change of land use in general is the Flying Squirrel (*Pteromys volans*). When Finland entered EU in 1995, Finland was the only country in the community to host this animal (nowadays Estonia has also its share). Hence, the squirrel was added to Annexes II and IV to the Habitats Directive, which means that the flying squirrel is a species referred to in section 49 of the NCA (see 1.B.1. above). This, in turn, has led to conflict between construction projects and nature protection, also clearly visible in administrative Courts. The problem is that in certain areas the squirrel is not very rare and it may be difficult to plan a road or a residential area without encountering biotopes inhabited by or at least suitable for the flying squirrel. In practice, however, it has been completely possible to safeguard the relevant breeding sites and resting places and connections between other forest areas, if the occurrence of the species has been carefully investigated in the course of the planning procedure. In some cases, though, it has proved necessary to apply for a derogation from the ban included in section 49 NCA, based on Article 12, section 2, of the Habitats Directive.

The motorway between Helsinki and Turku ran through areas with dense populations of the Flying Squirrel, and the State Council issued derogation from protection. SAC resolved that, for part of the road, alternative transects could not be chosen and a derogation could be made by Article 16, section 1 c of the Habitat Directive. Even then, the road project did not endanger the conservation status of the species. (*Finnish Supreme Administrative Court, KHO:2003:98*)

Sometimes it seems that Habitats Directive species are used to promote other interests than nature protection or simply to halt the planning on the area. In several new cases e.g. existence of different bat species has been claimed, in order to prove that reports on nature values have not been sufficient for approving of a land use plan safeguarding the breeding sites and resting places of Directive species.

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

See I.A.3. and 5. above.

A shoreowner had dredged an area of shallow water, destroying the only locality of two protected water plant species in the lake (*Najas tenuissima* and *N. flexilis*). The person was sentenced to a fine of 1 665 euros (45 day fines⁴) and to compensate the estimated value of the plant specimens, 14 296 euros, to the State. (*Finnish Supreme Court KKO:2006:74*)

There are extremely few published court cases concerning environmental crimes. These cases are, naturally, dealt with by courts of general jurisdiction, not administrative courts. The Supreme Court case above is actually the only published case concerning protected species. The case ended up in the Supreme Court in order to resolve if the Regional Environmental Centre (nowadays the ETE-Centre) was to be considered as a party in the case, who could claim the confiscation – besides the Public Prosecutor. While explicit provisions in the NCA were lacking, the Court said no. Two dissenting Justices would have afforded the party status to the Environmental Centre.

Some pieces of news reveal that deliberate killing and illegal hunting is a threat to big carnivores. E.g. regrettable cases where a wolverine has been killed by using a snowmobile have been reported. Criminal sanctions can be based on ch. 48 a, section 1, of the Penal Code. However, it is not easy to catch the offenders and bring them to justice.

I.B.5. Conduct falling under article 3(f) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy and paste or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an

⁴ The amount of a day fine shall be set so that it is reasonable in view of the solvency of the person fined. The amount is one sixtieth of the average monthly income, minus taxes and a fixed deduction for basic consumption, and for the maintenance liability. The amount is defined by Decree. The smallest amount is six euros, and e.g. if the offenders monthly income is about 3 000 euros, the day fine would be roughly 30 euros.

infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

See I.A.5. above. Species, which are protected by the NCA of by Decree or are under protection regulations of nature reserves, are covered by provisions in ch. 48, section 5, of the Penal Code and section 58, subsection 2, point 1, of the NCA.

Moreover, pursuant to section 58, subsection 2, point 2, of the NCA, violation of NCA species protection provisions for commercial purposes is punishable when committed either wilfully or through gross negligence. Violations are e.g. taking possession of, selling, importing or exporting an animal or plant specimen, or a part or derivative thereof. The violator shall be sentenced to a fine.

International trade

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community, your country?

The necessary transposition of the CITES Regulation is based on the Nature Conservation Act. The Ministry of the Environment has the overall supervisory powers according to the Act, and the Ministry shall also assume the administrative authority referred to in the CITES Regulation. The Finnish Environment Institute, however, is the competent authority referred to in the CITES Regulation in all matters concerning the issue of permits and certificates. The Finnish Museum of Natural History at the University of Helsinki is the scientific authority referred to in the Regulation.

Customs offices are responsible for supervising export and import of specimens etc. of CITES species.

Also trade in protected species not listed in the CITES Regulation is prohibited without permission. The competent authority is the ETE-Centre.

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

See also I.A.3. above.

In connection with nature conservation crimes, both general provisions concerning confiscation in the Penal Code (ch. 10) and a specific provision on forfeiture are applicable. Pursuant to section 59 of the NCA, whosoever is guilty of a nature conservation offence or violation shall be sentenced to forfeit to the State that which constitutes the object of the offence. In addition –

and this is more peculiar – the monetary value of a protected plant or animal as a representative of its species shall be forfeited. The Ministry of the Environment has by Decree set standard monetary values for protected animals and plants.

According to the Ministerial Decree on monetary value of protected animals and plants (9/2002), the value of an individual of the Saimaa Ringed Seal is 9 755 euros. The value of the Flying Squirrel is 1 009 euros, that of the White-backed Woodpecker 4 037 euros and that of the Common tern (*Sterna hirundo*) 84 euros. Values for protected plant and moss species can be obtained from the regional environmental authorities.

The right of seizure in nature reserves is based on section 60 of the NCA. The authorities have the right to appropriate implements used for hunting and gathering or other equipment, which has been used or intended for purposes contrary to the provisions and regulations observed in the nature reserve. The same right of seizure applies to animals unlawfully captured or plants unlawfully removed from a nature reserve, etc.

11.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy and paste or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

See also I.A.5. above.

Pursuant to section 58, subsection 2, point 3-5, of the NCA, violations against the CITES Regulation are punishable when committed either wilfully or through gross negligence. The violator shall be sentenced to a fine. The descriptions of the offences read as follows:

3) imports, exports, or conducts through transit across Finnish territory an animal or plant specimen, or a part or derivative thereof, referred to in the CITES Regulation, without a permit or certificate required by said Regulation, or fails to comply with the stipulations specified on said permit or certificate;

4) imports from a third country or exports to a third country an animal or plant specimen, or a part or derivative thereof, referred to in the CITES Regulation, without passing via a customs office designated under the NCA, or fails to make the import notification required under the said Regulation; or

5) purchases, offers for sale, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial purposes, sells, keeps for sale, offers or transports for sale an animal or plant specimen, or a part or derivative thereof, referred to in the annexes A or B in the CITES Regulation, in contravention of Article 8 of said Regulation.

Probably can acts contravening the CITES Regulation (and section 44 of the NCA) also constitute a criminal offence according to ch. 48, section 5, of the Penal Code already at the moment, but a

possible unclarity will be abolished by amending the referred section in the context of transposition of the Eco-Crime Directive into Finnish legislation (Government Proposal 157/2010). This also means that corporate fine could be used as sentence in these cases.