

ITALIAN REPORT

EUFJE Brussels Conference 2010
The Enforcement of European Biodiversity Law at National Level

General Introduction

In the Italian Constitution of 1948, three terms indirectly refer to the environment: *landscape* (Art.9); *historic and artistic heritage of the nation* (Art.9); and *health* (Art.32).

A later constitutional law (No.3/2001) introduced another three words: the term “*environment*” tout cour ; the term “*ecosystem*” and the term “*cultural heritage*” (Art.117 (s)).

The protection of ecosystems (namely, the interrelations among living beings with the places in which they live) has become the primary task of the Italian Republic.

As we know, the ecosystem is an ecological unit referred to a space or, in other words, to a physical territory and it is made up of two elements: a basic physical-chemical environment and a set of living organisms in it.

Its legal protection in Italy includes all aspects of biodiversity: genetic diversity, the diversity of the species and ecosystem diversity, because the concept of ecosystem also groups together genes and species.

The human role in biodiversity is complex and ambivalent: humans are part of it and above all they are responsible for its proper evolution and conservation.

Italy does not have just one single law on biodiversity.

Italy has ratified all the international conventions that directly or indirectly concern biodiversity and, in the first place, the Convention of Rio de Janeiro of 1992 (under Law No. 124/1994) and it is currently working on the realisation of a National Plan on Biodiversity (CIPE resolution, G.U. No.107/10 May 1994).

Also in relation to the Community system, the Directives relating to biodiversity have also been implemented in Italy: the Habitat Directive (92/43/EEC) was implemented under Law No. 357/1997; the Birds Directive (79/409 / EEC) was implemented under Law No. 157/1992. Therefore, the Natura 2000 Network in Italy has quite a consistent legal base.

The Natura 2000 Network in Italy includes:

SCI: 2255 sites

SPA: 559 sites

Of a total of 198 habitats in Europe, 129 are found in Italy; of a total of 221 animal species in Europe, 95 species are found in Italy; of a total of 360 plant species in Europe, 83 species are found in Italy.

Italy has three bio-geographical sites:

- 1) the Alpine regions
- 2) the Continental regions
- 3) the Mediterranean regions.

Protected areas in Italy cover more than 3 million hectares, corresponding to about 16.5% of the national territory.

They are subdivided into 5 main categories:

- **National Parks:** 21 Areas (1,272,037 ha)
- **Regional Parks:** 127 Areas (1,646,732 ha)
- **National Reserves:** 144 Areas (125,881 ha)
- **Regional Reserves :** 333 Areas (218,054 ha)
- **Other Protected Areas:** 150 Areas (108,981 ha)

It is interesting to note that two important Italian laws referring to landscape and protected areas (see Code of Cultural Heritage and the Landscape Law No.137/2002 and Law No. 394/1991) deal with the spatial aspect and are also particularly effective on an operational level. Consequently, the laws that refer to individual species of flora and fauna integrate the spatial protection system.

A. Habitat protection

A1. In Italy, the Habitats Directive 92/43/EEC was implemented under Law No. 358/1997

A2. Supervision of habitats is exercised by the Ministry of the Environment and Protection of the Territory and the Sea and the Ministry of Agricultural Policies. The State Forestry Corps is the specialised supervision organ and can carry out inspections in loco

A3. Criminal, civil and administrative sanctions are provided for in Italy.

Criminal sanctions relate to the most serious cases of the alteration of the habitat in a spatial sense or alteration of the flora or fauna species found in it. For example, there are criminal sanctions for all works without prior authorisation from the competent authorities.

There are criminal sanctions for opening quarries or dumps, for the alteration of the water system, for killing animals, for cutting plants, for lighting fire, etc.

Criminal sanctions range from 12 months imprisonment up to Euro 25,822 in fines.

There are two types of administrative sanctions:

a- Those of a procedural nature (suspension of the works; nullity of the acts and projects that do not have planning permission; possible confiscation)

b- Those of an economical nature, that is, a sum of money that varies according to the case.

Civil sanctions refer to environmental damage to the ecosystem concerned (Art.18 of Law No. 349/1986; Legislative Decree No.152 of 3 April 2006, Arts. 299-318), in the sense of the restoration of the site or, failing that, the payment of compensation in monetary form to the State.

A4. There are two sanctions if a project involves to a habitat that has not had an environmental implications assessment by the competent authorities: an administrative penalty that nullifies the project; and the criminal penalty found in the legislation on protected areas (Law No. 394/1991).

A5. A Law approved on 12 May 2010 that implemented the Ecocrime Directive 2008/1999/EC on the criminal law protection of the environment.

The Parliament has delegated the Government to act within 9 months.

The criteria that have to be adopted are clarified in relation to the following important points:

- The criminal cases are those indicated in the Community Directive;
- There is no criminal responsibility for public bodies but only individuals;
- Pecuniary administrative sanctions, confiscation, the publication of the decision and also injunctions.

B. Species Protection

B1. Italy has specific legislation on the protection of wild fauna as state heritage which appears to be in conformity with the Community and international legal order.

There is no single law regarding wild fauna. The main regulations are found in Law No.157/1992 which implements both the Birds Directive (79/409/EEC) and the Habitats Directive (92/43/EEC).

B2. Supervision of the application of the national law (and also of the regional laws on the matter) is entrusted to:

- Agents of local bodies that are delegates of the Regions
- Voluntary game wardens from national hunting, agricultural and environmental protection associations
- State Forestry Corps

B3. In Italy, there is an enormous variety of animal and plant species for geological reasons and for the particular position on the peninsula and its islands within the Mediterranean.

All the species of flora and fauna covered by the international conventions (including the Berne Convention), are protected under the Italian system.

B4. There are very detailed criminal sanctions regarding:

- Hunting during the period in which it is prohibited;
- Capture and detention of highly protected mammals and birds (for example, bears, steinbucks, chamoix, Sardinian mouflons)
- Hunting in national parks, in regional parks and in other protected areas (because it is absolutely prohibited)
- Bird catching
 - Etc.

Administrative sanctions are also provided for in the various cases of less serious offences.

The level of the sanctions is adequate.

The application of sanctions is reasonably effective because the bodies in charge of supervision and public opinion are particularly sensitive to the matter.

The jurisprudence is very vast and is too broad to discuss here.

B5. As already mentioned, Italy has only recently implemented the Ecocrime Directive under an act of 12 May 2010.

It is an act issued by the government under parliamentary delegation and the government is required to take action on it within 9 months.

C. International Trade

C1. Specific offences related to the application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed in Washington on 3 March 1973 were introduced in Italy under Law No. 150/1992.

The offences also refer to violations of Regulation (EEC) No. 3626/1982 and its subsequent amendments.

Supervision is exercised by the CITES service of the State Forestry Corps and is concerned with the importation and exportation of living or dead species that are protected by international and Community law.

The competent Ministries are:

- Ministry of the Environment and Protection of the Territory and the Sea;
- Ministry of Agricultural and Forestry Policies;
- Ministry of Foreign Trade

C2. There are criminal and administrative sanctions as well as civil sanctions in Italy.

The principal kinds of prohibited conduct and the main points of the criminal legislation are:

- Importation and exportation of species without a prescribed certificate;
- Violations of the requirements set out in the certificate or licence;
- Use of species in violation of the regulations;
- Etc.

The criminal law provides for confiscation as obligatory.

Also the detention of protected species has to be reported: failure to do so means that a criminal sanction or, in less serious cases, an administrative sanction will be applied.

The jurisprudence is quite severe in the event of alleged personal or domestic use of wild species introduced through international tourism.

C3. The Ecocrime Directive has not, as yet, been fully implemented in Italy because the law was only enacted on 12 May 2010.

There is a great deal of jurisprudence on CITES importations;

Cruelty to animals (as autonomous living beings which possess psycho-physical sensitivity and are capable of reacting to stimuli of pain);

Improper transport, even international transport, of animals;

Detection of embalmed birds;

Vivisection