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Greek Report

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General Background for Species Protection

In the Greek Legal System, species protection is regulated within the framework of the nature protection legislation. The first legislative framework that dealt with species protection was the Presidential Decree 67/1981 *“On the protection of indigenous Flora and Wild Fauna and on the determination of the coordination procedure and the Control on their Research”*, which was based on the empowerment set in the Law for the protection of the forests (Law 998/79). The Directive 92/43/EC was transposed into the Greek Legal System through the issuance of the Joint Ministerial Decision (hereinafter JMD) 33318/3028/11.12.1998 and the JMD 14849/853/E103/04.04.2008. Furthermore, the relevant legislative framework for the protection of biodiversity and wild Flora and Fiona was significantly enriched through the introduction of the Law 3739/2011 *“Preservation of Biodiversity and other provisions”*. It is worth noting that the afore-mentioned Law designated all the relevant areas which were characterized as sites of Community Importance in accordance with the European Commission Decision 2006/613 and its subsequent modifications, as Special Areas of Conservation (hereinafter SAC). SAC designation needs to be complemented by the adoption of conservation objectives. Those areas along with the areas which have been designated as Special Protection Areas (hereinafter SPA) under the Birds Directive constitute the Greek network of NATURA 2000 sites¹, which are also an integral part of the national protected areas. About 30-35% of those areas fall under the jurisdiction of the Management Bodies which have been established by Law 3044/2002². Furthermore, there is a significant delay in

¹ The Natura 2000 network in Greece includes 419 areas, of which 239 have been designated as SACs and 202 as SPAs. Moreover, 24 areas are both SACs and SPAs. (The two remaining Sites of Community importance were included in the Commission Decision in 2012). The final characterization and the Management Plans for each Natura 2000 site, which include the conditions and limitations in the relevant area must be incorporated in a Presidential Decree after a Proposal of the Ministry for the Environment which is subject to the approval of the Council of State (Article 21 par.7 of the Law 1650/1986, as amended by Law 3937/2011). The conditions and limitations on the designed activities and developments in an area under characterisation as a protected area may be set by a JMD, but only for a period of up to two years (which may be extended for up to one year in exceptional circumstances).

² Law 2742/1999 provided for the creation of Management Authorities for the protected areas, while Law 3044/2002 established 25 Management Bodies. The total number of Management Bodies is 29. It is worth mentioning that the Management Authorities are legal entities governed by private law, so that they cannot undertake public law responsibilities in the sense of issuing administrative acts (permits) or imposing penalties. Their basic responsibility is to monitor and evaluate the application of the Management Plans that have to be elaborated for the respective protected area, to collect and elaborate scientific data and information and to give an opinion for the authorization of projects within the protected area or nearby (Articles 15 and 17 of the Law 2742/1999, as modified). See also *M. Kritikos*, The

the inclusion of the marine protected areas which have been characterized as sites of Community Importance through the relevant Commission Decisions in the national network of protected areas.

Hunting and fishing activities are regulated through separated legal instruments, so that issues of inconsistency can be created.

Introductory Questions

a) In accordance with the 5th Report to the Convention on Biological Diversity, Greece is characterized by a rich flora and fauna, a high number of fungi species and a wide array of eco-systems and landscapes, while a high number of country species are unique worldwide³. As it is mentioned in the EU Environmental Implementation Report for Greece with reference to the previous national report under Article 17 of the Habitats Directive, only 60% of the assessments for Mediterranean habitat types and 13% for species indicate a favourable conservation status, while for 65% of the species and 20% of marine habitats the status is unknown due to the lack of reliable data⁴. Furthermore, also in accordance with the 3rd report under Article 17, an unfavourable status is indicated for species.

The major threats which are identified for the species hosted in the Greek territory in several official documents (5th Report to the Convention on Biological Diversity, National Strategy for Biodiversity adopted in 2014) and relevant papers⁵ are the following: a) Loss, fragmentation and degradation of natural and semi-natural habitats b) Over-extraction of water, increasing drought and climate change c) Unsustainable patterns of several production activities, such as agriculture, tourism and d) biological invasion.

b) The Basic Law for the Protection of Biodiversity (Law 3739/2011) does not contain any specific principles for the protection of species. There is a single reference for the protection of significant species of flora and fauna as a significant element of the protection of biodiversity in general.

I. Directive 92/43

1. Surveillance of the conservation status (Article 11)

Article 3 para. 2 of the Law 3739/2011 stipulates that the Ministry for the Environment develops an electronic data-basis, which contains all the available data concerning the ecological conditions and the conservation status of the protected species and habitats. On the basis of this provision, a program for the monitoring of the protected habitats and species under the Habitats and the Birds Directive has been established, which constitutes mainly an electronic data-base which contains the relevant information for the conservation status of the protected habitats and species. All the relevant data

protection of nature before the Greek Courts : sustainable management of Natura 2000 sites and the significant role of the Council of State in : Charles-Hubert Born/ Francis Haumont (eds), *Natura 2000 et le juge / Natura 2000 and the Judge*, Brylant 2014, p. 287, 298.

³ Convention on Biological Diversity, 5th National Report of Greece-Executive Summary, p. 2.

⁴ EU Environmental Implementation Review, Country Report-Greece, Brussels 3.2.2017, p. 10.

⁵ IUCN Red List, Greece's Biodiversity at Risk-Call for Action, Factsheet 2013.

were critical for the submission of the 3rd national report under Article 17 of the Habitats Directive. It is worth mentioning though, that the specific webpage developed by the Ministry for Environment (<http://www.ypeka.gr/Default.aspx?tabid=889&language=el-GR>) does not contain the data in a finalized form, but only certain provisional results of the relevant scientific project, while the development of a consistent monitoring mechanism is not foreseen.

Furthermore, responsible for the surveillance of the conservation status of the protected species is either the Ministry for the Environment and Energy or the Management Bodies designated for the protected areas in cooperation with the Ministry. Especially, in the case that the critical protected species is hosted in a SAC for which a Managing Body is designated, the respective Managing Authority is cooperating with the Ministry for the elaboration of measures relating to the surveillance of the conservation status of the protected species.

2. Conservation of species (Articles 12-16)

2.1 Articles 12-13

Article 8 of the Law 3937/2011 provides for the establishment of national targets for the preservation of species of Community importance which are hosted in the designated SACs through the issuance of a Ministerial Decision with the aim to ensure their favourable conservation status. Furthermore, the afore-mentioned provision stipulates that *conservation targets* should be set for each SAC or for groups of such areas either through the relevant Ministerial Decision setting national conservation goals or through the issuance of separate Ministerial Decisions. The relevant conservation targets should be based on certain criteria relating to *the conservation status of the relevant species at national and EU level, the threats and dangers as regards their extinction and the overall coherence of the NATURA 2000 network* (Article 8 para.1). Furthermore, it is provided that the relevant conservation targets and the measures necessary to achieve them constitute an integral part of the Management Plans which had to be elaborated for each SAC until the end of 2012 (Article 8 para. 3). Moreover, it is provided that in the case that a SAC falls under the jurisdiction of a Managing Body, this Authority is also responsible for the elaboration of the relevant Management Plan (Article 8 para.4).

Furthermore, Article 10 of the Law 3739/2011 stipulates that the Ministry for the Environment in cooperation with the Ministry for Agriculture and the Ministry for Marine Affairs establish *a national list of significant flora and fauna species* and that the classification of the relevant species is in accordance with the red catalogues (para. 1). It is also foreseen that the Ministry for the Environment in cooperation with other competent Ministries or Agencies should elaborate and implement Action Plans for species protection, giving preference to the following categories of species : a) species protected by International Conventions and the EU Law b) endemic species c) species which are classified as endangered species in the national and the

international red catalogues d) species which are important for the local communities (para. 2).

Article 9 of the Law 3739/2011 sets also certain limitations for the activities which can be authorized in the Greek network of NATURA 2000 sites. More specifically, Article 9 para.1 prohibits the authorization of the following activities in the areas which belong in the Greek network of Natura 2000 sites: a) activities falling into the scope of the SEVESO III Directive, b) industrial installations of high disturbance c) fishing activities using trawl nets, dredges, shore seines or similar nets and fishing activities with static nets over coralligenous habitat and mäerl bed and d) fish farming on *poseidonia* beds. Furthermore, building is still permitted in Natura areas, but only on plots with a minimum size of 10,000 square meters. **Concrete prohibitions, specific limitations or conditions for the authorization of certain activities will be set in the relevant Presidential Decrees which define the exact limits of each SAC or SPA and adopt the relevant Management Plans.**

Although the existing framework provides certain central directions, guidelines and regulations for species protection, in order to comply with the requirements of the Directive 92/43/EC, it cannot be characterized as complete and coherent. This can be attributed to the fact that the relevant Regulatory Administrative Acts mainly in the form of Ministerial Decisions or Presidential Decrees, which are necessary for the effective implementation of the legislative provisions relating to the species and habitats protection and for which delegation was provided to the Executive organs, have not yet been issued. More specifically, the following Regulatory Administrative Acts, which are critical for species protection have not yet been issued: a) **The Ministerial Decision which would set National Targets for the Conservation of Species of Community Importance (Article 8)** b) **The Ministerial Decisions which would set Conservation Targets for each SAC or for groups of such areas (Article 8)** c) **The Ministerial Decision which would set standards for the Conservation Measures that have to be introduced as part of the Management Plan for each SAC, including those hosting protected species** d) **The Ministerial Decision which would establish the national list of significant flora and Fiona species and their respective classification (Article 10)** and e) **The Presidential Decree which would include the updated national list of endemic species of flora and fiona by modifying the existing Presidential Decree.**

2.2 Article 14

a) Greece identified areas in which hunting was forbidden at least since 1969, when the Forest Code (Legislative Decree 86/69) was introduced, which also established wild animal refuges. In particular, it is stipulated in the Code that hunting is forbidden, *inter alia*, in permanent wild animal refuges, areas with temporary hunting bans, the core areas of national parks, in 300m from the coastline and areas subject to special hunting bans as a result of recent forest fires. In accordance with the relevant JMD 414985/1985, a Regulatory

Ministerial Decision is issued every year, which sets the concrete species allowed to be hunted, the maximum allowable number of species to be hunted, the opening and closing dates and the limitations or the prohibitions of hunting in certain sites of special importance. The content of the relevant Regulatory Ministerial Decisions was criticized by the environmental NGOs as regards the following issues: a) the lack of sound scientific data on which the relevant decisions were based, b) the determination of varying opening and closing dates for the hunting of the relevant species and c) the lack of clear-cut prohibitions for the hunting of species enjoying special protection and for hunting activities within the limits of the protected areas⁶. It is also worth referring to the Decision 1210/2007 of the Council of State (Injunctions Committee), where the Court suspended the validity of the Regulatory Ministerial Decision which defined the opening date of hunting in the midst of August of 2007, for the respective hunting season on the grounds that *it was not based on specific scientific studies concerning the impact of the extensive fires happened that year on the wild fauna and that it did not set any measures for the protection of the species that lived in the areas affected by fires and migrated to other areas not affected by them*. Finally it is worth mentioning that the Ministry for the Environment initiated a National Dialogue for hunting and designated a scientific Committee that would come up with some proposals about the reform of the existing framework for the hunting activities⁷. The relevant dialogue has not resulted so far in the adoption of a concrete legislative proposal.

b) Furthermore, it is worth noting that in a series of Decisions the Council of State annulled the relevant Ministerial Decisions which allowed the hunting of certain species (e.g. wolf, fox) on the grounds that they were not based on specific scientific studies concerning the situation of the species (Decisions 336/1993, 1174/1994, 324/1999).

2.3 Article 15

Article 11 par.3 of the JMD 33318/3028/11.12.1998, by which Article 15 of the Habitats Directive was transposed, states: "*As regards to the capture or killing of wild species listed in Annex V (point a) of article 20 when deviations laid down in article 14 are applied for specimen collection, capture or killing of species listed in Annex IV (point a), the use of all non-selective means that may cause local extinctions or heavily disturb the populations of a species is prohibited. More specifically: a) the use of means of capture or killing listed in Annex VI (point a), of article 20, b) any form of capture and killing by transportation means listed in Annex*

⁶ See Submission of the Positions of the Hellenic Ornithological Society as regards the First Axon of the National Dialogue for Hunting, available at: <http://www.ypeka.gr/Default.aspx?tabid=920&language=en-US> (in Greek); Submission of the Positions of WWF Hellas regards the First Axon of the National Dialogue for Hunting, available at: <http://www.ypeka.gr/LinkClick.aspx?fileticket=ep9ci%2fOR1I0%3d&tabid=920&language=el-GR>.

⁷ The opinions of the stakeholders and the NGOs are available at: <http://www.ypeka.gr/Default.aspx?tabid=920&language=en-US>

VI (element b) of article 20 are prohibited". Furthermore, a similar prohibition is set in Article 9 of the Presidential Decree 67/1981 on the protection of indigenous flora and fauna.

Despite the clear prohibition set in the afore-mentioned provisions, a significant issue that arises relates to the use of poisoned baits which are responsible for the non-natural death of certain wildlife species (such as the Egyptian vulture). Moreover, a very serious poisoning incident of scavenger birds of prey took place in Nestos Gorge in February 2012⁸.

The implementation gap as regards the relevant legislative prohibitions, which can be attributed to the inadequate surveillance and supervision of poisoning incidents and the minimal enquiry of the complaints, constitutes a significant cause of the problem. In the context, the Greek Ombudsman undertook mediation efforts in order to mobilize the competent authorities both at national, regional and local level, in order to coordinate their efforts in terms of taking surveillance measures for the non-natural deaths of wild species by poisoned baits⁹. Another reason to which the use of non-poisoned baits can be attributed relates to the unaccountable illegal trade of agrochemical products (pesticides). Therefore, a relevant measure which was taken, relates to the obligatory and electronic prescription of pesticides¹⁰.

It is worth mentioning that the European Commission initiated an infringement procedure against Greece for not taking necessary measures in accordance with the Nature protection Directives to prevent the death of wild animals and birds from the use of poisoned baits, while also the Permanent Committee of the Bern Convention¹¹ made a reference to the problem.

2.4 Derogation from provisions (Article 16)

Article 14 of the JMD 33318/3028/11.12.1998, by which Article 16 of the Directive 92/43/EC was transposed into the national legal system, does not set any further reasons than those set in the Directive which could justify the derogation from the provisions related to species protection. The relevant provision is, though, rather vague formulated in the sense that it is not clearly inferred whether the derogation from the provisions relating to species protection requires a permit in the form of Ministerial Decision for each individual case or for a category of species. The grammatical interpretation of the relevant provision supports the view that there is no need for an individual permit but rather for a permit covering categories of species.

⁸ K. Ntemiri & V. Saravia, *The illegal use of poison baits in Greece. 2012-2015*, Hellenic Ornithological Society/BirdLife Greece, Athens, 2016.

⁹ Special Report of the Greek Ombudsman, *Death of wild animals due to the use of poisoned baits*, November 2016.

¹⁰ Ministerial Decision 9497/104760/20.8.2014 ("*Prescriptions for the use of pesticides*") requires the electronic prescription of pesticides and specifies in this manner the relevant legislative provisions which introduced the obligatory prescription of pesticides (Article 44 para. 4 of the Law 4235/2014).

¹¹<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2848867&SecMode=1&DocId=2290920&Usage=2>

2.5 and 2.6

Article 12 of the Law 3937/2011 (“Preservation of Biodiversity”) stipulates that the Ministry for the Environment in cooperation with the Ministry of Agriculture or the Ministry of Marine Affairs, if necessary, should elaborate a national list of invasive non-native species on the basis of the estimated degree of danger, which constitutes part of the Greek inventory of biodiversity. Furthermore, it is provided that Action Plans have to be elaborated for the most dangerous invasive not-native species. The relevant provisions have not been implemented so far.

An Assessment of the implementation of the legislative framework for species protection

Departing from the fact that the existing legislative framework cannot be regarded as complete and coherent due to the non-issuance of the necessary regulatory administrative acts, significant problems can be observed as regards the effective implementation of the existing legislative framework.

In this context, a first issue relates to the observed *deficiencies of the existing institutional arrangements for the management of the protected areas*. In particular, as already mentioned, only 30-35 % of the areas which belong to the Greek Network of NATURA 2000 sites, including those hosting species of Community Importance fall in the jurisdiction of the Management Bodies which despite the lack of administrative responsibilities, have an overall surveillance as regards the situation in the protected area. In this context, two specific issues also emerge. *The first one relates to the fact that the already existing Management Bodies have faced significant difficulties at the operational level due to the lack of financial and human resources. The financial problems were solved to some extent though the issuance of a Ministerial Decision, which stipulates that the Management Bodies are financed by the Green Fund¹². The second one relates to the fact that there are no sufficient institutional arrangements for a significant part of NATURA 2000 sites including those hosting protected species, so that it cannot be ensured whether those areas are sufficiently monitored or not.* Furthermore, there is also a discussion relating to the need of strengthening the monitoring responsibilities of the Management Bodies.

A second significant issue relates to the significant delay *in the adoption of Action Plans for protected species as well as of Management Plans for the respective SACs, including those hosting protected species*. In this context, it is worth noting that Management Plans have been approved for only 4 out of 241 SACs (2% of the relevant areas), while many of them are under preparation¹³. Furthermore, very few Action Plans for protected species have been elaborated and even fewer have been adopted. It is worth referring that the relevant EU-funded

¹² Ministerial Decision 1310/2016 “Approval of Financing Programme “Management of Natural Environment” for the year 2016.

¹³ 3rd National Report under Article 17 of the Directive 92/43/EC for the period 2007-2012, Annex I.

Life-projects which have been implemented mainly by NGOs, resulted in the elaboration of “informal” Action plans for certain species, contributing thereby to their protection¹⁴. Due to the significant delays in the designation of further sites of Community Importance as SACs, but also due to the inaction and the delays in the elaboration of Management Plans and the setting of conservation targets for both protected habitats and species, the Commission has initiated in February 2016 an infringement procedure against Greece for its failure to take the necessary measures to implement the Habitats Directive.

Furthermore, the gaps as regards the implementation of species protection legislation are also reflected in certain Rulings of the CJEU after infringement procedures initiated by the European Commission.

a) The first case related to the **insufficient protection of the sea turtle “*Caretta-Caretta*”, namely a protected species, in the Laganas Bay in the Island of Zakynthos**. The ECJ¹⁵ ruled that the Greece infringed the obligations arising from Article 12 para.1 (b) and (d) of Directive 92/43/EC by failing to adopt a legislative framework which would ensure the strict protection of *caretta-caretta* against any deliberative disturbance during the breeding period and against any deterioration of the breeding site¹⁶. Furthermore, the Court ruled that the use of mopeds on the sand beach to the east of Laganas and the presence of pedalos and small boats in the sea area around Gerakas and Dafni constitute deliberate disturbance of the species in question during its breeding period for the purposes of Article 12(1)(b) of the Directive (para. 36), while also the existence of buildings in a breeding beach was regarded liable to lead to deterioration or destruction of the breeding site (para. 38).

Furthermore, another issue relating to the insufficient protection of *Caretta-Caretta* in the Zakynthos Island which was brought to the CJEU, concerned to the continued operation of a landfill in the area of the National Marine Park, which was established for its protection. The Court ruled that the continued operation of the landfill which was made possible after the extension of the relevant environmental permit violated Article 6 para. 3 of the Habitats Directive, as the extension of the permit was not based on a prior Appropriate Impact Assessment as regards the impacts of its operation on the protected site¹⁷.

b) The second case related to the insufficient protection of the viper *Vipera schweizeri*, which is a protected species of Community importance. The EJC ruled that Greece infringed the obligations arising from Article 12 para.1(b) and (d)

¹⁴ “Evaluation Study to support the Fitness Check of the Birds and Habitats Directive” of March 2015 (as supplemented in April 2015) submitted by WWF on behalf of the most significant Greek environmental NGOs, p. 11,16.

¹⁵ ECJ C-103/00, *Commission v. Greece*, Judgment of 30 January 2002, ECR I-1147.

¹⁶ It should be mentioned that at the point of the discussion of the case before the ECJ, Greece had not yet adopted the Presidential Decree which classified the land and sea regions of the bay of Laganas and the Strofada islands as a National Marine Park and the Coastal areas of the communities of Zakynthos and Laganas as a Regional Park.

¹⁷ CJEU C-600/12, *Commission v. Greece*, Judgment of 14 July 2014, ECLI:EU:C:2014:2086.

of the Directive 92/43/EC, because it had not adopted the necessary regulatory framework in the form of a Presidential Decree which would set the necessary protection measures and impose limitations as regards the allowable activities in the area hosting the viper¹⁸. In response to the ECJ Ruling, the JMD 47567/2006 was issued which set a provisional framework for the protection of the area. After the expiry of the validity of the relevant JMD without the adoption of a Presidential Decree, a legislative provision was introduced which reinstated the JMD for other 5 five years.

c) The third and most recent case relates to the insufficient protection of the second most significant nesting beach for the sea-turtle “*Caretta-Caretta*”, which is the Kyparissiakos Gulf in the region of Peloponnese. The CJEU ruled that Greece infringed the obligations arising from Article 12 para.1 b and d of Directive 92/43/EC, because at the time of the expiry of the reasoned opinion Greece had not adopted the Presidential Decree based on the already elaborated “Special Environmental Study” which would designate the area as a regional park and determine the framework for the allowable activities and the other relevant limitations (paras. 146-149)¹⁹. Furthermore, the Court ruled that Greece failed to take concrete and effective protection measures mainly through the prohibition of activities which are likely to affect the breeding sites of the *Caretta-Caretta* deliberately or to harm the species (para.156). The protection of the Kyparissiakos Gulf as breeding nest of *Caretta-Caretta* attracted the attention of the Permanent Committee of the Bern Convention which adopted a Recommendation²⁰ calling Greece to take measures for strengthening the protection of the Gulf and avoiding the further deterioration of the area. The CJEU Judgement and the Recommendation of the Committee of the Bern Convention exerted pressure to the Greek Government, which modified the existing Draft Presidential Decree for the protection of Kyparissiakos Gulf and also issued a Joint Ministerial Decision which sets a provisional framework for the allowable activities in the area, until the Presidential Decree is issued after the approval of the Council of State.

IV. The Implementation of the Birds Directive

The Birds Directive was first transposed into the Greek legal system through the issuance of the JMD 414985/1985. The EU Commission took legal action against Greece for not transposing correctly the Birds Directive, for not creating a sufficient and coherent legislative framework for the Special Protection Areas and for not taking the necessary protection measures for the birds hosted in those areas. The ECJ ruled three subsequent times that Greece

¹⁸ ECJ C-518/04, *Commission v. Greece*, ECR 2006, I-42.

¹⁹ CJEU C-514/14, *Commission v. Greece* Judgment of the Court of 10 November 2016.

²⁰ Bern Convention, Recommendation of the Standing Committee on the conservation of the loggerhead sea turtle (*Caretta caretta*) and of sand dunes and other coastal habitats in Southern Kyparissia bay (NATURA 2000 – GR 2550005 “Thines Kyparissias”, Peloponnesos, Greece, 2014, Recommendation Number 174.

violated the obligations arising from Articles 3 and 4 of the Birds Directive²¹. In response to the Rulings of the CJEU, a JMD²² was issued which incorporated in a rather sufficient manner the Birds Directive, as codified by the Directive 2009/147. As already mentioned, 202 sites have been designated as SPAs.

One of the most contested issues relates to the authorization of wind parks in SPAs. In this context, it is worth mentioning that Article 5 para. 8 of the Law 3937/2011 stipulates that the installation of wind farms is not permissible in Special Protected Areas (SPAs) which are classified simultaneously as wetlands of international importance under the Ramsar Convention as well as in areas of absolute nature protection (strict nature reserves) and in nature reserves. Furthermore, Article 5B of the JMD 37338/1807/2010, as modified by the JMD 8353/276/2012, reiterates the prohibition for the installation of wind farms in SPAs classified also as wetlands of international importance and in the area of the Big Prespa Lake. Furthermore, Article 5b para.3 stipulates that the Special Ecological Assessment (e.g. the greek term for Appropriate Impact Assessment under Article 6 para. 3 of the 92/43 Directive which is also applied in the Birds Directive) has to satisfy certain requirements in the case that the wind farm is designed to be installed in a SPA that hosts certain species, such as Gyp fulvus, Gypaetus, Aegypious Monachus²³.

The JMD 37338/1807/2010 sets also further requirements and protection measures that must be taken in the case of the authorization of extractive activities in SPAs (Article 5C) and includes certain provisions for the content of the Regulatory Decisions as regards the hunting activities (Article 5D) and for the agricultural activities in those areas (Article 5E). Finally Article 5G of the JMD 37338/1807/2010, as modified by the JMD 8353/276/2012, foresees that the Forest Authorities of the Decentralized Administrations²⁴ are responsible for guarding SPAs and elaborate Plans for Safekeeping and Monitoring in those areas with the aim to ensure compliance with the relevant prohibitions.

Relevant Jurisprudence:

a) Decisions 1422/2013 and 807/2014 of the Council of State: aa) **Decision 1422/2013:** The Court had to deal with the compatibility of the relevant provision of the Special Framework for Spatial Planning for Renewable Energy Sources (Article 6 para.3), which in principle allows the installation of wind mills in SPAs, with the Birds Directive. In particular, the critical provision stipulates that the installation of wind farms in those areas requires

²¹ ECJ C-334/04, *Commission v. Greece*, ECR 2007, I-9215; ECJ C-293/07, *Commission v. Greece*, ECR 2008, I-182; CJEU C-259/08, *Commission v. Greece*, ECR 2009, p.1-2.

²² JMD 37338/1807/2010 "Measures for the Conservation of Wild Birdlife and Habitats", Official Government Gazette Issue 1495/B/2010.

²³ More specifically, it is required that the Special Ecological Assessment should define a perimeter Exclusion Zone from the nests or colonies of the species.

²⁴ Seven Decentralized ("State") Administrations were established by Law 3852/2010 ("Kallikratis Reform") and exercise the competences that the State decided to maintain under its jurisdiction at decentralized level.

the elaboration of a specific ornithological (“bird-related”) study, which, in addition to the EIA Study, can set specific requirements for the project implementation or even result in a refusal to grant authorization. Departing from the fact that the provisions of the Special Framework for Spatial Planning of RES are of regulatory nature, the Court ruled that the aforementioned provision is in line with the Bird Directive to the extent that it requires the ornithological study as a precondition for the authorization of wind mills in SPAs. The Court ruled, though, that the omission of the Special Framework for Spatial Planning to introduce a provision which would presuppose the elaboration of a specific ornithological (“bird-related”) study for the authorization of wind farms also in the designated “ Significant Areas for Birds” which have not been, though, designated as SPAs, contradicts the Birds Directive. Therefore, the Court gave a six-month deadline to the administration to introduce a relevant provision. **bb) Decision 807/2014 :** As the administration did not respond to the condition set in the Decision 1422/2013 for the introduction of a specific provision in the Spatial Planning Framework which would require the elaboration of a specific ornithological study as a precondition for the authorization of wind mills in the “Significant Areas for Birds”, the Court annulled the relevant omission of the administration. It is worth referring that the Legislator introduced a provision with required content in the Law 4269/2014 (Article 13).

b) Decision 2306/2016 of the Council of State: The Court had to deal with the issue of whether the Ministerial Decision which upheld an appeal of an environmental NGO against an environmental permit granted at decentralized level for a wind park in the region of Thrace was sufficiently justified or not. It is worth referring that the region of Thrace is defined as a Wind Priority Area in the Special Framework for Spatial Planning for RES, while it has also a high avifauna value. The Court ruled that the relevant Ministerial Decision which annulled the environmental authorization for the wind park was sufficiently justified on the grounds that *the relevant authorization decision was based on a Special Ecological Assessment which did not sufficiently take into account the cumulative impacts of the existing wind parks and the authorized project to the protected birdlife species.*

V. Enforcement

a) Responsible Authorities

The Ministry for Environment and Energy is the Authority responsible for the enforcement of the provisions relating to the protection of biodiversity and species (Article 15 of the Law 3937/2011). More specifically, the Department for Biodiversity and Protected Areas of the Directorate for Biodiversity Protection, Soil and Waste and the Department for Wild Life and Hunting of the Directorate for Forest Protection in the Ministry for Environment have the responsibility for ensuring species protection in the whole Greek territory. Furthermore, in the case that a SCA or a SPA falls under the jurisdiction of a Management Body, the latter cooperates with the relevant Departments of the Ministry and the regional or local authorities, in order to ensure compliance with the relevant provisions for the protection of

species and birds. A critical provision which has strengthened significantly the role of the Management Bodies in dealing with the environmental violations by means of criminal law is Article 28 of the Law 1650/1986, as modified by Article 7 para. 6 of Law 4042/2012, which stipulates that "... where (environmental) crimes occur, the prosecution may be attended by public entities, among others also management bodies, irrespective of whether they have suffered a financial loss or not, seeking in particular the restoration of things, to the extent possible. A written preliminary procedure is not required". Furthermore, the Directorate of Rural Economy and Veterinary Medicine of every Region is responsible for reporting the incident of a poisoned animal (Article 186 II, B, c, 32 of the Law 3852/2010) and for granting transfer authorization and approval of the transferring documents of the poisoned animal to the management, or the disposal site (Presidential Decree 211/2006). The local municipalities have also competences as regards the identification of a poisoned animal and are considered as the provisional holders of the poisoned animal (Article 5 para 2 of Law 4039/2012). If the poisoned animal is dead, the Municipality is considered as the holder of toxic waste under Article 11 para. 6 of the Law 4042/2012 and is regarded liable for its management under Article 14 no. 37 of the same Law.

Finally, the forest rangers at local level have responsibilities for the protection of wild animals living in forest areas. In accordance with Article 80 para. 1 of the Forest Code (Legislative Decree 86/1969) forest rangers can take measures to protect local fauna and flora.

b) Administrative and Criminal Sanctions

The sanctions enshrined in the legislation in the case of violation of the relevant provisions for species and birds protection constitute mainly a combination of administrative and criminal sanctions.

aa) Administrative Sanctions:

Article 19 of the JMD 33318/3028/11.12.1998 stipulates that in the case of violations of the provisions relating **to the protection of habitats and species**, the administrative sanctions, which are set in Article 30 of the Law 1650/1986, are imposed. Furthermore, Article 11 para. 1 of the JMD 37338/1807/2010 ("protection of birds") stipulates that the administrative sanctions foreseen in Article 30 of the Law 1650/1986 are also imposed in the case of the violation of the relevant provisions which relate to the permissible activities in SPAs and the respective prohibitions and limitations (Article 5 to Article 5G). Those sanctions range from 500 euro to 2.000.000 euro and the exact amount depends mainly on the seriousness, the frequency and the recurrence of each violation.

Furthermore, Article 11 para.2 of JMD 37338/1807/2010 provides administrative sanctions in the case of violation of Articles 6,7 and 8. In particular, a financial fine of 500-1.000 euros is foreseen in the case of the violation of Article 6 para. 1 (deliberative killing, possession and capture of birds) and Article 8 para. 2 (possession and trading of birds).

A financial fine of 200-500 euros is foreseen in the case of the violation of Article 8 paras. 3 and 4 (e.g. the prohibition of the hunting of birds standing

in electrical poles, pillars, antennas and cables and the prohibition of the use of shots made of lead).

A financial fine of 100-300 euros is foreseen in the case of the violation of Article 8 para.1 (the prohibition of the use of methods which can lead to the extinction of the species in the hunting activities) and paras. 3 and 4.

The relevant fines can be doubled in the case that the violation of the relevant provisions concerns priority species.

bb) Criminal Sanctions

Article 2 para.2 of the Law 4042/2012 ("Protection of the Environment by means of Criminal Law") in conjunction with Annex I foresees that the violation of the provisions of the JMD 33318/3028/11.12.1998 for the protection of habitats and species and the JMD 37338/1807/2010 ("birds protection") are classified as illegal actions for which criminal sanctions can be imposed.

Furthermore, in accordance with Article 3 lit. f and g of the Law 4042/2012 the killing, the extinction, the possession, the capturing and the trading of protected species of wild fauna and flora, as set in the JMD 33318/3028/11.12.1998, the EC Regulation 338/1997 and the JMD 37338/1807/2010 constitutes an offense under criminal law. Article 3 lit. i of Law 4042/2012 provides also that every action which causes substantial degradation of a habitat or species within a protected area is a criminal offense.

Article 28 para. 2 of the Law 1650/1986, as modified by Law 4042/2012 ("Protection of the Environment by means of Criminal Law") provides criminal sanctions either in the form of imprisonment of at least one year or a financial penalty ranging from 3.000 to 60.000 euros in the case that the aforementioned offences result in the pollution or the degradation of the environment. In the case that someone violated the relevant provisions due to negligence, an imprisonment of maximum one year or a financial penalty is provided.

Furthermore, also the Forest Code (Legislative Decree 86/69) enshrines various criminal sanctions relating to the illegal hunting (e.g. hunting without license, hunting in wild life refuges) in the form of imprisonment ranging from 2 months to 2 years. The conviction of the wrongdoers for illegal hunting constitutes the most usual constellation in which criminal sanctions are imposed.

The overall picture of a rather insufficient enforcement can be attributed to the lack of strong and consistent monitoring and surveillance mechanisms at regional and local level and to overlapping competencies among the various authorities.

It is worth noting that a Life Programme is currently being implemented by the University of Crete - Natural History Museum of Crete as contractor and the Greek Authority responsible for the Environmental Liability (SYPAPEZ), the Greek Nature Protection Society (EEPF), the Bar Association of Chania as well as the Heraklion Bar Association as partners (LIFE NATURA THEMIS). The main aims of project are the following: a) The

raising of awareness of the authorities, NGOs and citizens about the environmental damage b) The development of skills and the know-how of the interrogative clerks in exercising their duties as regards the environmental crime c) the awareness raising of the local societies, including the inhabitants near protected areas as regards the significance of the proper implementation of the EU Environmental Law and d) the contribution to a change of attitude of both authorities and individuals citizens as regards the prosecution of the environmental crime and the restoration of the environmental damage²⁵.

Environmental Liability

Despite the existence of the legislative provisions according to which every natural or legal person which causes damage to the protected species and/or their habitats is responsible under the Environmental Liability Regime (Presidential Decree 148/2009), this Instrument has not played so far a significant role for the restoration of the environmental damage caused to the protected species and habitats.

I. SEA, EIA, Appropriate Impact Assessment and species protection

The Instrument of the Appropriate Impact Assessment was first introduced in the national legal order through Article 6 of JMD 33318/3028/1998, according to which this kind of assessment constituted mainly an element of the EIA. A more precise provision as regards the application of the Instrument is set in Article 10 para. 1 of the Law 4014/2011, which stipulates that the Specific Ecological Assessment (the Greek term for the AIA) is required for both projects belonging to Category A and projects belonging to the Category B (e.g categorization under the EIA Legislation). Furthermore, it is foreseen that the Specific Ecological Assessment for projects belonging to Category A, namely those with the most significant environmental consequences, is attached as an Annex to the EIA and constitutes an integral part of the latter, while for projects belonging to the category B, which are subject to “Standard Environmental Commitments”, namely a procedure which results in the issuance of an administrative act declaring compliance with those standards, the Special Ecological Assessment is submitted independently (Article 10 para. 1 and 11 paras. 8 and 9). In the case that the conclusion of the Specific Ecological Assessment for a Category B project is that it may affect the integrity of the critical SAC or SPA, the competent authority can impose certain further terms in the relevant administrative act certifying the compliance of the project with the “Standard Environmental Commitments”. Furthermore, the relevant provisions of the Law 4014/2011 and the JMD 170225/2014 set the requirements of the Specific Ecological Assessment for projects belonging to the Category A.

Two main issues emerge as regards the legislative framework for the Special Ecological Assessment. *The first one is that although a coordination*

²⁵ See <http://www.lifethemis.eu/en/content/about-program>

between different forms of Assessments (EIA and AIA) and the undertaking of joint procedures is permissible and desirable, the AIA is not perceived as a distinct form of assessment with its own characteristics and consequences. The second one relates to the fact that *the classification of the projects in accordance with EIA legislation is the decisive criterion for the content of the Special Ecological Assessment in the sense that more extensive requirements are foreseen for Category A projects than those of Category B.* Such an approach does not seem to be in harmony with Article 6 para.3 of the Habitats Directive²⁶, as interpreted by the CJEU (C-127/02, *Wadeensee* , para. 21-27) because the only requirement for the application of the “AIA” is “a probability or a risk that a Plan or a Project will have a significant effect on the site concerned”.

Finally, the JMD 107017/2006 by which the SEA Directive was transposed into the national legal order, foresees that the Plans or Programmes which are implemented in the areas of the Greek network of Natura 2000 sites are subject to a “screening procedure”, so that it can be assessed whether the critical plan or programme is likely to have a significant effect on the integrity of the site.

What exactly are the roles of citizens and NGOs in species protection?

Citizens do not play a critical role for the protection of the species, as they are not well-aware about the significance of protecting biodiversity and species as part of our common heritage. Furthermore, in certain cases, species protection is viewed as an unnecessary obstacle to development projects by parts of the local communities.

NGOs have played so far a significant role in ensuring compliance with the EU Nature Legislation, including species protection for the following reasons: a) They contribute to the awareness-raising of the local societies in the vicinity of NATURA 2000 sites, while they also undertake national information dissemination and awareness raising campaigns b) They actively participate in public consultation procedures for the adoption of protective legal regimes or specific actions plans and they exert pressure to the Ministry for the Environment in adapting the necessary measures c) They challenge the relevant Regulatory or Individual Administrative Acts for reasons relating to the alleged violation of the Nature protection Legislation²⁷.

There are no specific procedural rules as regards access to justice in cases of violations of nature protection law. In general, the Greek system is governed by the “interest-based” approach concerning standing requirements (“direct, personal and present legal interest”) in administrative disputes, which are even more relaxed in environmental-related cases. In particular, the Council of State developed broad standing criteria by recognizing the right to take legal action not only to a wide circle of persons, but also to NGOs, legal

²⁶ G. *Balias*, *The Appropriate Impact Assessment of Projects and Plans in Areas of the Natura 2000 Network*, Environment and Law 4/2014, p. 577, 591-593.

²⁷ASSESSMENT REPORT ON THE LEGAL AND ADMINISTRATIVE IMPLEMENTATION OF THE BERN CONVENTION IN GREECE, Document prepared by Ms Virginia MURRAY, Watson Farley & Williams, Greece on behalf of the Bern Convention, Strasburg 20.10.2015, p. 10.

entities and even to groups of persons, which do not possess legal personality but are interested in the protection of the environment²⁸. Subsequently both natural persons belonging to the “public concerned” and NGOs can challenge rather easily in terms of legal standing, administrative acts or omissions relating to species protection.

²⁸ See *Gl. Siouti & G. Gerapetritis, Greece* in: J. Ebbesson (Ed), *Access to Justice in Environmental Matters in the EU*, 2002, p. 261, 263.