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Species protection

Report on Species Protection in Turkey

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I. General background

National legislation with regard to the protection of species bases on a mixture of conventions to which Turkey is a party, and laws in general nature on the various elements of the environment (see annex 1) as well as hunting and fishing regulations, and sub-regulations on the flora. Currently there is no specific law directly regulating nature protection and implementing the concerned United Nations' conventions, the Bern Convention as well as transposing EU's Habitat and Bird directives all together. Therefore, regulations on species and their habitats are fragmented. The specific regulations on fauna species are the Law on Terrestrial Hunting (Turkish abbreviation- KAK) and several related by-laws, particularly By-law on the Principles and Procedures for the Protection of Hunting and Wild Animals and Their Habitats and Prevention of Pests and Disease (KAKY). Some protection measures concerning fauna are established under the Law on Fisheries and related by-laws and circulars. Direct regulations with regard to flora are the By-law on the Collection, Production, Exportation of Natural Flower Bulbs and the by-law on the Collection, Preservation and Use of Plant Genetic Resources. International trade of both fauna and flora species has been regulated under the by-law issued to implement the CITES (see annex 2).

Legally, all regulations concerning the protection of species are applied at the national level since there is no regional administrative system in Turkey.

II. Introductory questions

1. Risks-threats

Risks to species and their habitats are described in so many various reports prepared either by public authorities or NGO's apart from so many scientific surveys concerning single species (see annex 3). Some of the reports are the documents submitted to the secretariats of the relevant conventions. Additionally, specific action plans concerning various species and prepared by the special teams consisted of private companies, NGOs and universities through the projects conducted under the auspices of the relevant authorities have also contain the risks. Therefore risks and their ranks vary to flora and fauna species as well as to each particular species apart from the ones which are related directly to habitats and protected areas. If we make a general evaluation taking into consideration all the cited reports the following general remarks can be reached. The highest risk for endangered marine fauna species (sea turtles) is the loss of habitats. Accidentally or deliberate killing places in the second rank. The highest risk for the terrestrial fauna species of colorful and remarkable appearance such as *viperakaznakovi* (Hopa's snake) is illegal capturing and transferring to abroad. Accidentally or deliberate killing by local farmers follows it. The same is also valid for flora species of the similar striking appearance as tulips (*tulipa orphanidea* –Manisa-, and *fritallariabaskillensis* –Elazığ-). On the other hand over grazing, transformation of wilderness areas into agricultural land, intensive agricultural and

forestry activities, and excessive use of pesticides placed on the top of the risks' list for some other flora and fauna species. Other risks that are ranked as medium and lowest degrees for all species are fishing, and lack of both knowledge and public awareness. Species faces also indirect threats caused to biodiversity in general. In that context husbandry and over grazing has been placed at the first rank in an official report. Other threats listed in the subsequent ranks are forest fires, housing and human settlements, and hunting in the same report¹

The main threat, not cited currently in any document, for not only species but also environment in general as well as for other social and economic issues is the politicization of the whole governmental process by the ruling party AKP. The priority in that context is given to developmental activities and the interests of investors who are pro government enterprises. Destruction of the major habitats of species through mining, construction of nuclear and hydropower plants, dams and airports as well as through huge infrastructure activities as the third bridge on the *Bosporus* in *Istanbul* and its connected territorial roads are the major consequences of that politicization. Indeed, moving away from the rule of law which is the main significant consequences of the said process also contributes to that destruction.

2. Principles of species protection

Several main principles of environmental law and policy such as prevention including prevention at source, participation, sustainability, polluter pays and strict liability are formulated in the main Law on Environment in a general framework (ÇK. Art.3). Apart from that the various provisions of hunting regulations indicate several principles without directly targeting certain species such as protection of species together with their habitats, wise use, coordination and cooperation of all stakeholders, maintaining the population of species as well as the balance of "protection and use". Further general principles as preservation and maintaining of wild flora and fauna for future generations can be cited under the conventions ratified by Turkey.

As regard the courts' perspective, it can be suggested under the jurisprudence of the civil and administrative courts that there is a general trend to just cite the principles indicated under the relevant regulations without making any comment.

III. Habitat Directive (92/43)

1. Surveillance of conservation status – (art 11, art. 14 HD)

a. Transposition and implementation

Surveillance of the conservation status of the natural habitats and species is firstly cited among the main aims of all relevant regulations indicating the general obligations. The competent enforcement bodies described under the question IV.a are required to establish an inventory system providing sound information for species and their habitats as well as to carry out monitoring activities such as the duties defined under question IV.c. It is hard to say that there is a clear and precise transposition or a sufficient data pointing out an appropriate practice. The latest report prepared and issued by the Ministry (OSİB) about the status of nature conservation dates 2013². It indicates several statistical data with regard to various issues as the type and number of protected areas, the number of certain wild animals which are damaged, cured, released and re-introduced to wildlife, the number of hunters

inspected for hunting offences as well as individuals committed hunting offences. However it does not include any information related to the evaluation of conservation status of habitats and species as whether they are favorable (green category) and inadequate (amber category) or unfavorable (red category).

b. Omissions and measures to remedy

Omissions by authorities with regard to *surveillance* are considered mostly according to the general rules of both criminal and administrative law because there is no specific provision in the hunting and fishing regulations. Under the established jurisprudence, NGOs and local people can bring legal actions for both the omissions and silence of public authorities before the administrative courts (see also the below question X). However if the general tendency of the courts is considered, it seems not likely to hold public officials responsible for their omissions on the protection of species unless there is a serious offence.

Violation of the legal requirements with regard to conservation of species and their habitats by private (real or legal) persons is stated under the below questions concerning sanctions, compensation and liability, and public participation.

2. Conservations of species (Art. 12 -16 HD)

2.1. System of strict protection for animal and plant species (Art. 12-13 HD)

a. Statutory measures: transposition, prohibitions

The prohibitive specific measures laid down in paragraph 1 and 2 of Article 12, 13 HD have been transposed into several provisions of the above mentioned hunting and fishing regulations as well as the by-laws and circulars on flora. Therefore it is not likely to suggest that transposition is clear and precise under such a fragmented regulations particularly in terms of flora species. Furthermore there is not a complete transposition because Turkey made reservation to several species listed in the Bern Convention during the ratification. On the other hand the relevant national legislation does not contain a provision emphasizing the application of the prohibitions to all stages of life of the animals as well as to all stages of the biological cycles of the plants (paragraph 3 of Art. 12 and paragraph 2 of Art. 13 HD). Furthermore, in terms of flora species, the prohibition of taking/ collecting from wildlife has been regulated only on the base of specified protected areas not species themselves under the relevant by-law. Therefore prohibition of taking of certain species from the nature as well as the lists of these species have been only specified under the circulars issued annually by the Ministry (GTHB).

The relevant legislation, apart from prohibitions, also contain other obligations as restrictions, and clauses relating to permits, enforcement, sanctions and compensation measures.

Regulation of hunting grounds in general and prohibited hunting grounds as well as working principles and procedures of both hunting areas and hunting tourism, and of voluntary hunting inspectors; determining hunting open seasons for species groups according to the region through the circulars and annual decisions issued by the relevant authorities are among the major administrative measures.

As regard the settled case-law, all administrative courts and the Constitutional Court consider whether public authorities took concrete and specific measures to perform their duties obliged under the relevant regulations. In that context they primarily refer to the provision of Article 56 of the Constitution indicating that the protection and improvement of environment as well as prevention of pollution is the duty of the State.

b. Other specific measures (plans, monitoring, regulating the population of species, liability for caused by relevant protected species to property).

Implementation measures (apart from prohibitions and restrictions) are following.

** Designation of conservation areas for the protection of species with their habitats:* “Wildlife conservation areas” and “wildlife improvements areas” are designated under the KAK for terrestrial species apart from other protected areas (biosphere reserves, national parks, nature parks, nature protection areas, specially protected areas such as habitats of *caretta caretta*) established in accordance with the various specific and general laws as well as the related conventions.

** Preparation of action plans and management plans with regard to both each species (in terms of strictly protected species) and protected areas apart from land use planning:* Strict conservation and protection measures are established particularly in the “species action plans” prepared for five years. Those measures have been carried out from the people who involved in the preparation process under the coordination of the competent authorities in accordance with that plans.

** Preparation of wildlife database taking into account of ecosystem carrying capacity for each game species through the inventory programs conducted by the established core inventory teams:* The main aim of that work based on sound and scientific inventory techniques is to manage populations of species and to predict factors that cause population change.

** Monitoring:* Monitoring is conducted in various ways. The provincial directorates have been obliged to prepare and update both the inventory and risks maps taken into account information concerning species in general and strictly protected species as well as their breeding nests, habitats, threats and hunting records etc.

** Establishment and management of wildlife breeding stations and rehabilitation and rescue centers.*

** Education and training of hunters and local people, and providing coordination among all stakeholders.*

** Compulsory broadcasting of public awareness programs on game and wildlife.*

As regard liability caused by protected species to property there is no specific rule or application. Farmers are allowed to protect their assets in certain conditions as mentioned under the question VII.a. Beyond that, the issue is resolved according to the general rules of administrative law. Under the administrative jurisprudence, *Danıştay* applying the principle of strict liability of the State concludes that the burden of the protection of a public interest such as protection of wild animals should not be imposed on just one person, and the State should be hold responsible in these cases.

c. The inclusion of proactive habitat management measures

The provincial directorates of the general Directorate within the Ministry have been obliged to carry out the work with regard to the restoration and improvement of degraded and deteriorated habitats in accordance with their management plans. A specific commission has to be established in provincial level for the restoration and improvement of the habitats which do not have any management plan or in case of the emergency situations. The ecological and biological needs of that habitats should be taken into consideration during the related work. Additionally, several national and regional NGOs also involve in the relevant processes.

Rehabilitation of species for which no protected areas are provided is carried out in the breeding and rescue centers (KAK. Art. 4/2) through *ex-situ* programs. A significant example on the issue is the program related to the endangered *Bald Ibis* which is of migratory nature, and lives in the *Southeastern Anatolia*, around the village of *Birecik*. That area has indeed a very rich biological diversity. Nevertheless it has not yet any protection status as a habitat. The said program has been carried out since 2003 to increase the number of the said birds with the contribution of an NGO under a protocol signed with the Ministry. The number of birds is gradually raised from 25 to more than 200, and eventually, as mentioned under question IV, 209 birds are released into the nature on 21 February 2017. Same programs (raising in the captivity and releasing into wild) have been applying for some other animals as *Anatolian Mouflon*, *Red Bear* and *Roe Deer*. Indeed Turkey is rewarded with the prestigious Edmond Blanc Prize of the International Council for Game and Wildlife Conservation for the conservation of *Anatolian Mouflon* in *Konya* province³.

d. Art. 12 (1) - “deliberate”, “disturbance”, “destruction”, “deterioration”.

There is neither a legal definition under the hunting and fishing regulations nor a precise interpretation in the jurisprudence concerning the terms “deliberate”, “disturbance”, “destruction” and “deterioration” in the context of species and habitat protection. “Destruction” has been included in the broad definition of the term pollution under the Law on Environment (ÇK. Art.3).

Case: The term “deliberate” is interpreted under the general principles of the criminal law as “knowingly and willingly”. A judgment reached by a first degree criminal court and subsequently approved by the appeal criminal court can be cited as an example of a large interpretation of the term “knowingly” although it is not directly related to species protection. The offender used a prohibited vehicle (truck emitting light) during night for hunting. He hunted in prohibited season and time using a prohibited gun and without a hunting certificate. Consequently, he had to face many criminal and administrative sanctions including confiscation of the truck by the enforcement body. The offender has objected that sanction on the ground that the truck is belong to his wife and she did not know that he has taken it. Following he argued that there is not any proof showing that his wife did know the situation. In spite of the validity of that argument (the lack of evidence) the court rejected the objection taking into consideration the behavior (culpability) of the offender apart from some general issues with regard to quality of the offence, and interest provided for the offender. By reaching his verdict the court reasoned that “according to the ordinary course of daily life it is unthinkable that a wife does not know that her truck will be using in an illegal hunting if particularly the time of offence (night) is considered”⁴.

2.2. Measures to control taking of and the exploitation of certain animal and plant species of Community interest(Art. 14 HD)

a. Restrictions (license, quota)

Various requirements are defined to restrict both hunting and other forms of taking specimen. Firstly, as a complementary restriction to the above mentioned prohibitions related to species and hunting methods-tools, hunting is only allowed in certain areas and periods. That areas and periods (such as hunting seasons, opening and closing times of hunting) are determined in the lists prepared annually taking into account geographical regions as well as the type of species.

Secondly, obtaining the required *permissions* such as permit for hunting, and certificate to be hunter from the competent authorities is required for every activity aiming either hunting/fishing or scientific research. Accomplishment of several conditions (such as taking the compulsory training and passing the relevant exam, paying the specified fee for hunting, submitting documents as CVs and filled declaration forms concerning commitments) is required to obtain all permits. Signing of a memorandum with the competent authorities is needed in certain areas such as taking species for scientific purposes. Similar conditions have been required for taking flora species from wildlife under the relevant by-law and circular as well.

Thirdly, *quotas* are established basing on both field and scientific data. In terms of fauna species, they are determined annually in accordance with a mathematical formula that is calculated taking into account the relevant data concerning populations and habitats of each species. That data includes information about the populations and status of species as well as the magnitude and quality of their habitats. Data has been provided by the Ministry (OSİB) as a result of a series of inventory studies. A core inventory team is established at the headquarters of the General Directorate within the Ministry for that purpose, and this team organized seminars for all provincial directorates. The studies of the provincial directorates are carried out through the field surveys conducted with the collaboration of hunters and villagers as well as scientists. As regard the flora species quotas are established under the annually issued circulars by the Ministry (GTHB). This ministry identifies the annual quotas as well as species prohibited of collecting and trade taking into consideration the opinions of both the expertise commission and the consulting committee.

It is not likely to predict *the effectiveness* of the collected data because it depends on a series of qualifications as expertise and impartiality as well as willingness of the people involved in the process. Nevertheless there is a general trend under the administration of the current Government (AKP) that the political ideology has a determinant factor in every areas as mentioned in the question II. Consequently, knowledge, efficiency, honesty and reliability is not a priority for selecting or hiring of officers and/or local people and NGOs involved in the process.

b. Differences in the management of species listed under Annex 4 and Annex 5 of the HD respectively, where the wolf is an example.

It is not possible to reach a precise information about the differences in the management of species listed under Annex 4 and Annex 5. Species like wolves and green bears are not

defined among of strictly protected species' lists under the national legislation. Indeed the wolf is among the species which Turkey made reservation for the species included in appendix II of the Bern Convention in the instrument of ratification, deposited on 2 May 1984. Consequently the wolves were considered as pest species until the amendment on the Law on Terrestrial Hunting in 2003. Currently, their actual protection is determined through the annual decisions of the Ministry (OSİB), and according to the latest decision of that ministry they are cited in the list of "protected wildlife animals" which hunting is prohibited except game tourism.

2.3. Prohibition to use of all indiscriminate means of killing (Art 15 HD)

The relevant provisions of both the Law (KAK) and By-law (KAKY) are not precise and clear. Thus, there is neither a general prohibition of using all indiscriminate means nor a specific list of them. That regulations, in one hand prohibit some means and methods by indicating their names, on the other hand give discretion to the Central Hunting Commission to specify the permitted hunting methods and tools. Moreover Turkey made a reservation on the issue during the ratification of the Bern Convention. The reservation is concerning the mammals and is related to the use of semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition. Beyond that, according to the provision of the said law the followings are prohibited: Hunting with poison, with automatic, semi-automatic, pump and similar hunting rifles without grooves and air rifles and pistols whose chambers are not limited so as to accommodate two bullets. Devices emitting sound, magnetic wave, light, living baits, traps and magnetic wave emitting devices, the use of which in hunting is prohibited similar instruments and tools. On the other hand it is stressed in the relevant by-law that only methods and traps not causing any harm and any suffer to the specimen as well as any negative impacts to their behaviors can be used for capture and keeping. Shortly, as regard the terrestrial fauna the specific lists with regard to the prohibited equipment as well as means are defined in the annual decisions of the Central Hunting Commission. As regard the marine species the same issue has been regulated in a similar way under the annual circulars issued by the Ministry (GTHB).

2.4. Derogations (Art. 16 HD)

a. The nature of derogations. General or individual?

Transposition concerning both the type and formulation of derogations are mostly in line with the ones described in Art. 16 HD. The justified reasons of derogations have been indicated under the relevant regulations. Obtaining permission from the competent authorities is required for all derogations, and permissions are given separately in accordance with each application concerning only a certain species.

b. Derogations unjustified in Art. 16 HD

"Maintaining of sustainability of traditional hunting" is included in derogations from the prohibition of capture of game and wild animals from wildlife as well as collecting of their eggs. Although it is clearly indicated in the same article that collecting of eggs for the maintaining of traditional hunting cannot be allowed, nevertheless that prohibition is not provided for the capture of animals themselves. On the other hand, derogations with regard to social and economic reasons can be challenged in terms of appropriate protection of species too. For instance eco-tourism is counted among the removals from the prohibitions with regard to the protection of "wildlife protected areas" (KAKY, Art. 21). More importantly,

activities under the Mining law and Petroleum Law are excluded from the prohibitions relating to the constructions in the “wildlife improvements areas” (KAKY, art.22).

c. Interpretation of the three test approach (favorable conservation status, specific reason- “reason of overriding public interest”, and satisfactory alternatives)

There is no available/reachable official or other type of data with regard to the interpretation of the mentioned three test either by public authorities or in academic studies.

A case related to the reason of overriding public interest: A judgment ruled by the high administrative court (*Conseil D’etat- Danıştay*) with regard to “reason of overriding public interest” can be cited⁵. This judgment is indeed not directly related to the protection of a certain species but a biodiversity area covering significant wild flora and fauna. The Court has abolished the consent given by the competent authority for the construction of a hydropower plant in a biodiversity area that has a special status of “world biosphere reserve” given by the UNESCO. Indeed that area (named *Camili* within the city of *Artvin* in the Black Sea Region) is universally known as one of the world most rich and threatened terrestrial ecosystems, and it is the only “world biosphere reserve” of the Country. The court compared two conflicting public interests in the case, and reasoned that “*when it is compared to the public interest that will be provided by the hydropower plant there is an overriding public interest in the maintaining of the protection status of that reserve. This interest means the interest of larger public as well as the long term interest although it has not yet a specific definition*”. Therefore the court did not accept the construction of a hydropower plant as a justified reason for derogation of economic nature.

d. Non obligatory compensation measures

There is no specific and detailed rule with regard to compensation measures in terms of all derogations. One of the related Articles under the Law (KAK) is about the destruction or deterioration of both “wildlife protected areas” and “wildlife improvement areas” by third persons either natural or legal. In that context the expenses done by the Ministry (OSİB) for the rehabilitation of destroyed areas will be compensated from those who cause the destruction of ecosystems as well as of wildlife. Other Article in the same law is related to the sanction of compensation for both the destruction and loss of wildlife and ecosystem. Beyond that, the people who cause deterioration can be held liable under the general rules with regard to compensation as mentioned under the below question V.

2.5. Re-introduction into wildlife (Art. 22 HD)

a. Re-introducing native Annex IV species

Re-introducing of species into wild is allowed under certain conditions (obtaining permission, submitting a reasoned report containing the ecological cycle of the relevant territory as well as biological and ecological needs of the species, and measures and methods of adaptation, consulting scientific authorities, and to re-introduce under the surveillance of the competent authority) specified in the Law (KAK) and the By-Law (KAKY Art.33, 35, 37). There is no requirement with regard to the public consultation in that process.

In practice, the number of game birds re-introduced into wildlife was stated as 88.400 in 2013, and the annual number of wild mammals re-introduced was indicated as 84 for the same year in an official report. The number of the wild animals cured and released was declared as 1643 in the same report⁶. Beyond that, 209 birds (*Bald Ibis-geronticus eremita*-) of a migratory nature has released into wildlife on 21 February, 2017 following a program of keeping and feeding them in the breeding centers during the winter to protect them from the threats of the Syrian War.

b. The deliberate introduction of non-native species

The deliberate introduction of non-native species is prohibited with an exception allowed under certain conditions (KAKY. Art.31/4). Firstly, the scientific bodies (CITES' or national authority) should certify that the introduction does not cause any ecological threat as well as any trouble in terms of fertility and genetic of species. Secondly, non-native species can introduce into only semi-wild and artificial habitats not near to wild- natural habitats. Thirdly, the competent authority has to take the consent of other public bodies authorized for the property issues before giving the required permission.

2.6. Overlapping between Annexes II and IV- simultaneous application of derogations

There is either no specific requirement or an administrative practice on the issue. It can only be noted that legally, overlapping and so duplication is existed also between the protection regimes of several protected areas. Consequently, there are some examples under the jurisprudence that administrative courts give priority to the public interest on the protection of habitats and species when they judge the legality of permits given for the development projects in such situations.

IV. Bird Directive (Art.5-9): Significant case- main problems- improper implementation.

Birds have been subjected to the same requirements with terrestrial animals under the above mentioned hunting regulations. One area of improper application is the underestimating of the negative impacts of wind farms during the decision making and impact assessment processes. In that context a report containing a complaint concerning the negative effects of the wind farms in *İzmir Peninsula* is submitted to the secretariat of the Bern Convention in 2016⁷. Second area of improper implementation is the inadequate enforcement of laws particularly in terms of prevention of illegal killing or hunting.

V. Enforcement

a. Responsible bodies

The main responsible body for the enforcement is the Ministry of Forestry and Water Affairs (OSİB) (the Ministry). The General Directorate of Nature Conservation and National Parks (the Directorate) within that Ministry, and the regional, provincial and national park directorates of the Directorate as well as its district offices are sub enforcement bodies. Monitoring of crimes and misdemeanors apart from other duties such as caring of wild animals are carried out by the "officials for hunting protection" and the "wardens of field" who are among the staff of the Directorate and its sub offices as well as by supportive and

voluntary staff from NGO's, local people and universities. The Ministry of Food, Agriculture and Husbandry (GTHB) and the Ministry of Environment and Planning also have responsibilities in a certain extent. The local police and custom's officers have also duties to catch and bring the infringers before prosecutors and other relevant authorities.

b. Sanctions

Criminal, administrative, and civil sanctions are imposed for infringements under the relevant specific laws as well as laws of general nature. Criminal sentences as imprisonment are provided for only most serious violations such as poisoning the habitats of the wild fauna, the threat of destruction to fauna species and/or to the ecological balance, and hunting with poisonous substances. Other criminal sanctions are fines and confiscation of substances and materials used in illegal hunting and other illegal activities. Therefore majority of sanctions are of administrative nature as fines, suspension of certificates and/or licenses, shutting down of illegal facilities constructed in the wildlife, forfeiture of illegal benefits, taking of the materials used in hunting as state property (confiscation), termination (temporarily or permanently) of polluted activities, and finally compensation for ecological damage and payments of expenses for rehabilitation.

It is not likely to estimate which sanctions are the most effective because the subject depends on various factors, and there is no statistical or any other type of official data including academic surveys. It may be assumed theoretically that the criminal sanctions are the most effective ones if we consider the general trend with regard to the lack of enforcement of laws by administrative authorities in the Country. However there are still obstacles in proving causality, fault and other elements of the crime in certain violations to hold offender responsible. On the other hand, in the light of some judgments of the courts, it can be predicted that confiscation of some materials like trucks used in crime is an effective sanction. However the effectiveness of that situations mainly depends on again the enforcement of the relevant requirements by the competent bodies.

c. Monitoring incidental capture and killing.

Sub offices of the above mentioned main enforcement bodies are officially obliged to monitor incidental capture and killing in the national level. Thus, inspection and control with regard to both habitats and species are carried out in the regional and provincial levels. "Wildlife rangers (guards)" working in the regional and provincial offices of the Ministry have been trained in inspection procedures. In addition, necessary equipment such as guns, radios, binoculars, cameras, sleeping bags, tents, and field vehicles have been provided to all the rangers in the provincial and regional offices to develop an efficient control mechanism. A handbook is published and distributed to these offices by the Ministry in order to provide standardization. Furthermore, "a voluntary wildlife warden" system has been established by the Directorate. These wardens principally communicate information concerning illegal activities in wildlife areas quickly to the regional offices of the Directorate or to the local corps of gendarmes, and vice versa. Wardens do not have any official status or receive any payment including for expenses. They are chosen entirely on a voluntary basis from hunters associations and from NGOs working on nature conservation. People with more than ten years of experience in outdoor recreational activities are entitled for application to be a warden⁸.

Apart from the work done directly by the officials some programs are developed with the collaboration of several stakeholders. A participatory project is established through the Village Governing Council. In this context the villagers who participate in conservation activities receive some benefits as money in return for their services in accordance with a protocol signed between them and the Ministry (OSİB). The Ministry considered this protection model as much more cost-effective, socially acceptable and sustainable as compared to the traditional conservation models by guards⁹.

On the other hand some specific monitoring activities regarding to particular species as strictly protected species have been conducted by the specific groups consisted of local people, universities and NGO's under the "species action plans" and "habitats action plans", and according to the specific circulars issued by the relevant ministries.

Periodical observation and interfering in the emergency cases, establishment of a communication network, a warden network throughout Turkey, raising awareness of the local people (hunters, students, yacht owners, farmers, fishermen etc.) and tourists through the various means of education including putting the warning signs on particularly the most vulnerable places are among the conservation measures described in the relevant regulations and policy documents.

d. Legal cases

Case 1. Restriction of the right to property: Constitutional Court's judgment on the claim of violation of the property right through the confiscation of a truck used in an illegal hunting¹⁰: The case is indeed the final judicial stage for the above mentioned complaint rejected by the criminal court (question III.2.d). The applicants (offender who illegally hunts a wild rabbit, and his wife) claimed that the confiscation of their trucks by the enforcement body is against to the right to property ensured in the Constitution. The court, taking into account the criteria used by the European Court of Human Rights, first decided that there is an interference to the right to property. Secondly, he evaluated the existence of "a legitimate goal" for the interference to decide whether there is "a just interference", and then held that it exists on the ground that species and their habitats are among the natural resources that must be protected within the context of the right to environment defined in Article 56 of the Constitution. By reaching this result he also referred to the provision in the Constitution on the right to property indicated that "the right to property should not be used contrary to the public interest". Thirdly, the Court assessed the validity of the final argument of the applicants about the improper balance between the sanction (interference) and offence (meaning taking the truck as response to just one hunted animal is not proportional). The Court rejected that argument reasoning that there is a fair balance between the interest of the applicants and the public interest for protection of species. By reaching that conclusion the Court only stressed that it is not possible to make an adequate comparison between an economically measurable interest as the interest ensured by the right to property and a non-measurable interest as the protection of species.

Case 2. A tort case- civil court- compensation for nature damage: The defendant in the case is the Ministry (OSİB), the plaintiff is a private company and its representative. The subject of the case is the illegal possession of 2400 fens' fur for import. The plaintiff is argued that the company has bought these furs from the people who hunt fens legally. However he could not prove that argument on the base of a solid evidence. Indeed, it turned out that the documents attached to the application submitted to the Ministry for import are entirely illegal as false receipts arranged for the name of imaginary people. Therefore, the Ministry claimed compensation for the damage to wildlife in accordance with Art.28 of KAK and related decisions of the Central Hunting Commission as mentioned below (the question V. e). The case was brought before the Board of the General Civil Chambers (the Court) of the high civil court (*Court of Cassation - Yargıtay*) as a final stage of civil

judicial proceedings. The Court first stated that it is clear under the evidences that the furs are illegally possessed by the offender. Secondly, he interpreted the said provision of the law as following. "Several sanctions (seizure of all materials used in illegal hunting as well as hunted animals and their materials, confiscation of equipment used in illegal hunting -taking the equipment as a state property-, and compensation) are defined in Article 28 separately. Thus, confiscation of captured animals' parts does not mean that the offender should not be subjected to the compensation sanction. Additionally, the requirement about re-introducing of the captured animals who are not injured into wildlife does not eliminate either the compensation obligation or the existence of the damage. Because a damage to wildlife is already occurred even in the situations that the hunted animal re-introduced into wildlife in a very short time. Furthermore, even the disturbance of a wild animal in its natural habitat in any form causes a damage because it would obviously make a negative impact on the animal. Therefore re-introducing cannot remove the damage".¹¹

e. Application of the Environmental Liability Directive

The ELD has not been transposed yet. The work is ongoing under a project funded by the EU to transpose it. Presently, the issue is considered under the broad definition of the polluter pays principle described in the Law on Environment as well as under the provision of the Law on Hunting (KAK) concerning rehabilitation of destructed areas as mentioned above (III.2.4.d).

As regard to damage to species and/or habitats, none of the current legislation contains neither the terms ecologic damage and/or nature damage nor a specific calculation system for damage let alone a definition for damage. The most related provision on the issue (KAK, Art. 28/5) states that compensation required for the deterioration and losses of both wild habitats and ecosystem due to illegal hunting should be determined by the Ministry according to each species. In practice that amount has been specified annually through the decisions of the Central Hunting Commission. Therefore, courts evaluate whether a damage exist or not in accordance with the general principles of tort law as can be seen in the above mentioned legal cases. Furthermore judges have a large margin of appreciation because there is no sound official data with regard to the initial state of the environment.

VI. SEA, EIA, Appropriate Impact Assessment

a. Assessments

The by-law on SEA was recently released in the official gazette (*Resmi Gazete*, 8 April 2017) to transpose the EU Directive. Thus, there is no application on the issue yet. Besides, this by-law has deficiencies in terms of the legislative perspective. First of all, there is a lack of legal certainty about the plans and programs that would be directly subjected to SEA because of the existence of the ambiguity and even of contradiction among certain provisions. Secondly, only its requirements with regard to plans and programs concerning certain subjects as coastal management, water management, agriculture and tourism entered into force at the date of the promulgation. Thus, 2020 and 2023 has been set up as the dates of being into force as the requirements concerning majority of plans and programs.

The possible negative effects of the development projects on both species and their habitats are taken into account during EIA process under the By-law on EIA before the

permit is granted. This by-law does not cover specific requirements dealing with species. It just lists all protected areas and their relevant laws and conventions in its Annex 5 titled “sensitive areas”, and requires that these entire legislation should be referred during EIA process. However it is not likely to say that there is an appropriate assessment because the protection of species as well as habitats faces a general problem of favoring development over the nature protection as mentioned under above question II. Consequently, the inadequate EIA reports have been prepared for development projects, and a great majority of them has been accepted by the relevant ministry for years.

b. *Permits for operations, and courts’ assessments*

Permits required for development projects causing possible adverse impacts on habitats and species are defined mostly under EIA process. Permits concerning all other activities are regulated in the context of the various laws. A developer who receives a permit at the end of the EIA process has to comply with all conditions attached to that permit to prevent or decrease the foreseeable negative impacts during all stages of the development project. Permits granted under other regulations also contain similar conditions in terms of environmental protection. Therefore inspection of permits is also defined under the various laws. Consequently all enforcement bodies are required both to inspect whether the requirements attached to the relevant permits are carried out and to take additional measures to prevent any damage.

Administrative courts and subsequently the Constitutional Court deal with the investigation of permits in terms of legality and public interest. In that context decisions of public authorities as regard granting permits have often been brought before the administrative courts by NGOs. Thus there are several annulment judgements on reasoning that species and habitat protection has not been properly assessed in the relevant EIA process. Nevertheless the Government, generally does not comply with these judgments.

If a damage occurs in spite of the accomplishments of all requirements defined in a permit, courts handle the issue according to the general principles of both administrative law and civil law as the “responsibility of administration” and the “duty of care”.

c. *Activities not subjected to permits*

Activities not subjected to the specific permits are managed and controlled mostly in accordance with the management plans of habitats as well as species’ action plans. In addition, the competent ministries (OSİB, GTHB) issued the circulars directly related to the surveillance and protection of either all protected species or only of certain species as *caretta caretta*. In terms of fauna protection, these circulars which target all enforcement bodies stressed the prevention of all activities as using of vehicles, beach materials and lightning systems, and even of the eco tours that will affect particularly the breeding and nesting areas of the protected species. Beyond that, some prohibitions and other restrictions as well as misdemeanors are defined to prevent the possible threats to habitats and species from activities not restricted by permits under the Law on Environment and the Law on Misdemeanors.

VII. *Agricultural or forestry activities*

a. *Derogations*

Hunting regulations does not contain either a specific provision of general nature or a derogation from species regime concerning agricultural activities. The only clause that can be seen as relevant is related to the protection of farmers (KAK Art.6/3, KAKY Art.57). Certain farmers are allowed to take a certificate for a certain type of hunting gun under certain conditions to protect their families, farms and animals from dangerous wild animals which are not subjected to the protection regime. However that certificate does not grant a permission for hunting. The details of the relevant conditions are regulated in the context of the decisions of the Central Hunting Commissions. Beyond that, the protection of species and habitats from agricultural activities is generally regulated through the regulations related to land use, agriculture and pollution control.

b. Sustainable agriculture, forestry and aquaculture

The code of “good agriculture practices” is adopted and applied under the responsibility of the Ministry of Food, Agriculture and Husbandry (GTHB). Financial supports either as annual payments or as credits are provided for farmers to reach various goals as to minimize the use of chemicals and water, to combat the harmful organisms and to increase the use of biological methods. Farmers are required to make agreements with the relevant special bodies authorized by the GTHB to participate in that program. Farmers are also entitled to receive payments under “the program concerning the protection of agricultural areas based on environmental goal” carried out by the same ministry. This program is valid for only sensitive agricultural areas where the quality of both water and soil is changed and these changes will cause negative effects on the environment in near future if the adequate measures are not taken. Farmers are required to make an agreement with the said Ministry to participate in that program too.

As regards the sustainable forestry, several programs containing financial support have been conducted with the coordination of the Ministry (OSİB) in accordance with the forestry regulations. Some of them as rehabilitation of deteriorated areas are carried out through the projects supported also by international and national NGOs.

c. Other forms of support

Providing some materials as seed, seedlings and forest trees to legal or real persons, particularly to the forest villagers without charge is adopted. The main goal of that supports which are provided according to the projects prepared by claimers and approved by the competent body is afforestation of both the destructed public forest areas and other possible forest areas including the private lands. Using the revenues collected from hunting in accordance with the user-pays principle for local villager's needs by the local governing councils is another form of support as mentioned in the above question V.c concerning monitoring.

VIII. Role of citizens and NGOs

Turkey is neither a party to the Aarhus Convention nor transposed the relevant directives of the EU. Therefore public and NGO's involvement in the species protection is carried out under the various national regulations in three stages. First stage is the involvement in the decision making process through the preparation of both management and species action plans with regard to habitats and species as well as through environmental impact

assessment process of development projects effecting the wildlife. In addition, one representative from NGO's and one from universities are legally entitled to be members of both the Central Hunting Commission and the Provincial Hunting Commissions. The second stage is related to the implementation of regulations and decisions of all competent authorities including the mentioned commissions, as well as to the inspection and control of hunters and illegal hunting. Thus NGOs and local public play a significant role as voluntary wardens during that process as mentioned under the above question V.c as regard monitoring incidental capture. In addition, local villagers involve in the conservation efforts under a participatory project mentioned in the above question V.c too.

The third and final stage is to refer to the administrative bodies as "public ombudsman" and/or administrative courts under the Law on Administrative Judicial Procedure for violations of legal requirements by public authorities. In addition, under the Law on Environment (Art.30), "everyone who suffers for a damage or hears of a polluted or destructed activity with regard to environment can refer to the competent bodies to provide either the necessary measures are taken or the mentioned activities are terminated". As a following step of that application, according to the opinion of the author of these lines, everyone without showing any interest can bring suits before the administrative courts if the competent bodies reject the application or remain silence. The Author has also gone one step further stating that everyone can bring a legal action to get "an injunction order for the relevant polluted activity" even before the civil courts since the relevant provision just indicates the term "competent bodies" without specifying which bodies are they¹². Nevertheless, so far this argument seems not accepted neither in literature nor by courts, and there is no such an application yet.

XI. Direct applicability

There is no direct application because presently Turkey is not a member of the EU.

Endnotes - references

¹ Orman ve Su İşleri Bakanlığı, *Biyolojik Çeşitlilik İzleme ve Değerlendirme Raporu*, Ankara 2012. www.milliparklar.gov.tr/kitap/34/?sflang=tr#p=1

² Ministry of Forestry and Water Affairs, *The Status Report on Nature Conservation (2002-2013)*, www.milliparklar.gov.tr/kitap/100/?sflang=tr#p=1, p.

³ Ministry of Forestry and Water Affairs, *Game and Wildlife in Turkey*, Ankara 2013, p.23. www.milliparklar.gov.tr/kitap/34/?sflang=tr#p=1

⁴ Elmalı Sulh Ceza Mahkemesi, K.2013/344, 10.1.2014.

⁵ Danıştay 6. Daire. E.2011/47733. K. 2014/7690. 26.11.2014.

⁶ See above footnote 2, p.15,17.

⁷ WindEnergy: Possible threats to an endangered natural habitat in İzmir (Turkey). Report by the complainant. Standing Committee 36. meeting Strasbourg, 15-18 November 2016. T-pvs7FILES (2016) 15.

⁸ See. above fn.3, p.19.

⁹ See above fn, p.19.

¹⁰ Anayasa Mahkemesi Kararı, Başvuru Numarası: 2014/5167, karar tarihi: 28.9.2016. Resmi Gazete 17 Kasım 2016.

¹¹ Yargıtay Hukuk Genel Kurulu. E. 2013/4-41, K. 201371511, T. 30.10.2013.

¹² This view has been defended by the Author since 2009. See. Nükhet Yılmaz Turgut, *Çevre Hukuku (Environmental Law and Policy)*, İmaj Yayınevi Ankara, p.173-74.

Annexes

Annex 1.A. Laws of general nature related to nature protection

* Environmental Law No. 2872 (amended). * Forestry Law no. 6831 (as amended). * National Parks Law No 2873 (amended). * Law No 2863 on the Protection of Cultural and Natural Heritage (amended). * Law on the Land Use and Protection of Soil No. 5403 (amended).

B. Conventions related to nature and species protection to which Turkey is a party

*1979 Bern Convention, *1971 Ramsar Convention, *1992 Convention on Biological Diversity, *1973 CITES (Washington Convention), *1976 Barcelona Convention, *Bucharest Convention, *1972 Paris Convention.

Annex 2. Specific legislation on species (hunting, fishing and flora regulations)

*Terrestrial Hunting Law No. 4915(amended). *Fisheries Law No.1380 (amended). *By-law on the Principles and Procedures for the Protection of Hunting and Wild Animals and Their Habitats and Prevention of Pests and Disease.* By-law on the Establishment of Wildlife Protection and Improvement Areas. * By-law on Keeping, Breeding and Trade of Game and Wild Animals and the Product Obtained from them. * By-law on Principles and Procedures for Selection, Education, Duties and Responsibilities of Voluntary Wildlife Wardens.*By-law on Working Principles and Procedures of Central Hunting Commission.* By-law on Possession and Trade of Wild Animals and their Parts and Derivatives. *By-law on Conservation of Wetlands. *By-law on Fisheries. *By-law on CITES. *By-law on the Collection, Production, Exportation of Natural Flower Bulbs.*By-law on the Collection, Preservation and Use of Plant Genetic Resources.

Annex 3. Reports on risks with regard to species

*Presumed Degradation of Nesting Beaches in Fethiye and Patara SPA's (Turkey). Report by the Government. Bern Convention Standing Committee 36 th meeting Strasbourg, 15-18 November 2016. T-PVS/files (2016) 25.

*Update Report by the NGO Sea Turtle Conservation Monitoring in Fethiye and Patara SPAs, Turkey. Bern Convention Standing Committee 36 th meeting Strasbourg 24 August 2016. T-PVS/files (2016) 35.

* Report on Status, Conservation and management of Large Carnivores in Turkey written by Ö. Emre Can. Bern Convention Standing Committee 24th meeting, Strasbourg, 29 November-3 December 2004. T-PVS/Inf(2004) 8.

*Threat to the Mediterranean monk Seal (*Monachus Monachus*) (Turkey). Report by the Government. Bern Convention Standing Committee 36th meeting, Strasbourg, 15-18 November 2016. T-PVS/files (2016) 47.

*Fifth National Report. UN Convention on Biological Diversity. Republic of Turkey Ministry of Forestry and Water Affairs. August 2014.