

Case study on illegal killing, taking and trading of birds

On April 23, 2018, **3 individuals** had been checked and retained by the environmental inspectorate in the vicinity of the local pond in Uster (imaginary town in the Member State where you actually live). The inspectorate found several dead birds in the reeds (a tall, slender-leaved plant of the grass family) that grows in water or on marshy ground at the shore of the pond:

- a) **18 birds of *Anser albifrons* (the white-fronted goose)**, a specie which can be hunted under the Birds Directive (Annex I); and is not listed in the CITES convention or Regulation (EC) No 338/97, pop. 3m, trend unknown;
- b) **23 birds of *Gavia stellata* (the red-throated loon)**, a specie protected under the Birds Directive (Annex I), which is not listed in the CITES convention or Regulation (EC) No 338/97, pop. 300k decreasing;
- c) **6 birds of *Branta ruficollis* (the red-breasted goose)**, a specie protected under the Birds Directive (Annex I) and listed in the CITES convention (Annex II) and Regulation (EC) No 338/97 (Annex A), pop. 30k decreasing.

It is of a common knowledge that there is a population of around 1000 birds of each of the abovementioned species in the area concerned, and less than 5000 in your country.

As regards the individuals retained:

- 1) A novice **hunter Sasha F.** (19 y.o.) admitted he had shot the birds, but no more than 15 birds altogether. He claimed that he shot only at the *white-fronted geese*. If some other birds were shot, it is because they were impossible to distinguish from the *white-fronted geese*. He argued that he had a valid hunting permit and used his legally owned gun, but admitted, that he left the dead birds on site which is contrary to the national Game Act. He has no criminal past and comes from a very rich family.
- 2) Sasha F.'s **brother in law Martin F.** (36 y.o.), an experienced hunter, provided Sasha F. with advice which exact birds to shoot at. He also helped him with loading the gun. He claims he had done nothing wrong and that Sasha F. did not have to listen to his advice. **Martin F.** served 3 years in prison (2008 – 2011) for assault and was fined for poaching in 2001 and in 2015 (50 + 200 EUR). Before 2008, he served in the military. Since then, he is on disability pension due to injuries suffered in Afganistan. He is divorced and has 3 children.
- 3) **Tania B.** (61 y.o.) witnessed Sasha F. shooting all the birds down - and collected the birds which were left in the reeds afterwards. She had stored totally 32 dead birds (16 + 10 + 6 of the listed species) in her car and was stopped when leaving the area. She wanted to prepare some birds as food in her restaurant and give the rest to her friends or trade them. She has no criminal past, but was fined regularly (more than 12 times) in recent years by administrative authority for various minor administrative offences in the field of nature protection. She owns a restaurant and is married with 1 adult child.

Questions:

- 1) Does your national law conceive killing of the birds enlisted under letters a), b) and c) a criminal offence or merely an administrative offence? Do you find the national law in compliance with Directive 2008/99/EC in this respect (*see below*)?
- 2) What kind of penalty does your national law allow to be used in this case?
(*Only imprisonment / Imprisonment and fine / Imprisonment or fine / Imprisonment and/or fine – 3 options / Imprisonment with or without fine – 2 options / Only (criminal) fine*)
- 3) What is the maximum imprisonment penalty used in your Member States regarding this offence or offences?
- 4) If confiscation of property is an option in your country, would you consider confiscating guns of the hunters and the car of Tania B.?
- 5) Would you find the individuals guilty? What aspects would you consider as the most important? Please, take as a fact that it is difficult to distinguish a bird of one specie from the other species.
- 6) What would be a proper sanction, in your opinion, should you find the offenders guilty? Does it differ from the sanction which would be probably imposed in practice?
- 7) Which gravity factors listed in the Bern Convention Recommendation No 177 would you take into account and how? (pick 5)

Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law:

Article 3 Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

Art. 1 (b) 'protected wild fauna and flora species' are:

(i) for the purposes of Article 3(f), those listed in:

— Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,

— Annex I to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

(ii) for the purposes of Article 3(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (3);