

# European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



## ENPE newsletter - Issue 7

08 October 2018

### Message from ENPE President Anne Brosnan



Dear colleagues,

I hope that many of you now have in hand your arrangements, by trains and boats and planes, to attend our Annual Conference in Crete this month. It promises to be a fascinating subject mix of green issues, birds, wildlife concerns, enforcement and prosecution practice and water resource protection. I am sure that everyone who attends will bring away a greater understanding of how we can better protect the environment. The collaborative approach we are taking, in organising our conference with partners, reflects the value of linking up with other bodies doing similar work to our own, to help us achieve more together.

We are very excited to be introducing international guests, from Brazil and China, who will talk to us about their significant experience in environmental protection work but also their plans to improve their national legislation or working practices to achieve even better results.

This month we will also be attending the EU Commission's second workshop on Combatting Environmental Crime in Brussels as part of its Environmental Compliance Assurance initiative. We will be revisiting the discussions and findings from the first workshop and separately talking to the Commission about how we can best secure the future of our network and setting out a draft work plan for ENPE post 2020.

There is no doubt that as ENPE grows and develops, we identify more expertise and experience which can be shared amongst our members. We have in this newsletter three cases from the Czech Republic, which I hope you will find of interest and relevant to the work you do. There are also some interesting cases from the United Kingdom and I am pleased to confirm that we have prosecutors attending the conference from many countries to introduce their cases and contribute to the discussions about water and species protection.

On a personal level I wanted to reassure our members that ENPE is considering and making plans to encompass the eventuality of the United Kingdom leaving the European Union in March 2019. Your Board has made plans to ensure that our important work will continue and we hope to be able to provide you with more information at the ENPE AGM to be held at the conference. Please do attend if you can.

## 2018 annual conference updates

### ENPE annual conference 23-24 October 2018; Crete, Greece



*“Protecting habitats and endangered species in Europe through tackling environmental crime”*

ENPE is joining forces with two EU LIFE programme funded projects with similar objectives in tackling wildlife crimes as ourselves: LIFE Reason for Hope <http://waldrapp.eu/index.php/en/en-home>; and LIFE Natura Themis <http://www.lifethemis.eu/>, as well as colleagues from the IMPEL Water Pollution Crimes Project Group, for our 2018 conference to be held at the Natural History Museum of Crete in Heraklion, Crete on the 23 & 24 October 2018.

Our conference programme is now complete with keynote speakers including EU Director of Natural Capital, Mr Humberto Delgado Rosa; Dra Raquel Dodge, the Prosecutor General for Brazil and Harvey Bradshaw, the UK Environment Agency’s Executive Director of Environment & Business. We will also be holding our Annual General Meeting at the conference venue on Tuesday 23 October at 17.45 hrs.

We welcome all attendees, including our members, to what is sure to be an interesting and stimulating event.

### European Forum of Judges for the Environment (EUFJE) annual conference 16-17 November 2018; Sofia, Bulgaria

The EUFJE Annual Conference will this year be held at the National Institute of Justice in Sofia, Bulgaria. The conference theme is “Training and Specialisation in Environmental Law” with speakers from the EC introducing the European Environmental Compliance Assurance initiative; the EJTN; ERA; the Belgian Constitutional Court; the Swedish Environmental courts and The New South Wales (Australia) Land and Environment Court confirmed in the conference programme.



Image from EJTN website Bulgaria

For more information and the conference programme please see: [https://www.eufje.org/images/docConf/so2018/so2018-Programme\\_EN.pdf](https://www.eufje.org/images/docConf/so2018/so2018-Programme_EN.pdf)

## ENPE membership news

The ENPE Board are pleased to report the further expansion of the network with new full membership applications recently received and approved from the Law Office of Cyprus and the Romanian Public Ministry Prosecutor's Office attached to the High Court of Cassation and Justice. We have also approved Observer membership for the Croatian Ministry of Environment & Energy. More details, including the latest ENPE Board meeting minutes from our 05 June 2018 meeting can be found on our website.

Our list of ENPE membership organisations, including members and observers is currently - FULL MEMBERS: Environment Agency (England, UK); Ministere de la Justice (France); Environmental Protection Agency (Republic of Ireland); Riksenheten för Miljö- och arbetsmiljömål (Sweden); Openbaar Ministerie, Functioneel Parket (Netherlands); Vrchni statni zastupitelstvi v Praze (Czech Republic); Ökokrim (Norway); Rigsadvokaten (Denmark); Fiscalía General del Estado Medio Ambiente y Urbanismo (Spain); Drvazno Dovsetnisvo Republike Hrvatske (Croatia); Finnish Prosecution Service (Finland); Specialised Multi-field Prosecution Office (Latvia); The Greek Public Prosecution Service (Greece); The Association of Public Prosecutors (Former Yugoslav Republic of Macedonia); Italian Environmental Prosecutors General; Law Office of Cyprus; Romanian Public Ministry Prosecutor's Office attached to the High Court of Cassation; SUPPORTING MEMBERS: Sara Boogers of the Public Prosecutor's Office, Antwerp, (Belgium); Carla Campanaro, Head of LAV legal office, Italy & Project Lawyer to the Life Reason for Hope project; OBSERVERS: European Union Forum of Judges for the Environment (EUFJE), Brussels (Belgium); International Association of Prosecutors (IAP); Sofia Regional Prosecutors office (Bulgaria); Dublin City Council (Republic of Ireland); Eurojust (Netherlands); The State Environmental Inspectorate (SEI) (Former Yugoslav Republic of Macedonia); Brazilian Federal Prosecution Service (Brazil); TRAFFIC (Belgium); Croatian Ministry of Environment & Energy.

For more information about joining ENPE please contact [shaun.robinson@environment-agency.gov.uk](mailto:shaun.robinson@environment-agency.gov.uk)

## ENPE Members – news and activities

### Spanish State Environmental Prosecutors on French TV

Mr Antonio Vercher Noguera, our ENPE representative for Spain, recently participated in a TV programme that documented the positive impact Spanish Environmental prosecutors are having in the fight against environmental crime. With specialist Spanish state prosecutors in existence for ten years, convictions against environmental criminals have more than tripled, and are rising all the time with 20% more convictions reported between 2016 & 2017.

The TV programme follows how Spanish prosecutors, including our Spanish ENPE Member representative Mr Antonio Vercher Noguera, work closely with the specialized environmental unit of the Spanish civil guard – SEPRONA – to hunt down and prosecute environmental criminals.

Calls for state environmental prosecutors in France are being made following the success of the Spanish enforcement organisations in tackling environmental crime. Please see the link below for more details:

[https://mobile.francetvinfo.fr/monde/espagne/espagne-la-police-de-l-environnement-fait-regner-la-loi\\_2902783.html](https://mobile.francetvinfo.fr/monde/espagne/espagne-la-police-de-l-environnement-fait-regner-la-loi_2902783.html)

Meanwhile, the new Spanish government is carefully considering the possibility of introducing the principle of “universal jurisdiction” for environmental crimes. For more information, please see the article within the link below (NB it is in Spanish and may need translation if you are unfamiliar with this language):

<http://www.europapress.es/nacional/noticia-justicia-situa-prada-juez-gurtel-consejo-justicia-universal-20180828175625.html>

## **ENPE NETWORKING**

### **ENPE representation at UNDC, Vienna and the French Embassy in Kiev**

ENPE International Vice-president Jean-Philippe Rivaud, recently travelled from his base in Brasilia, Brazil, for two key meetings in central Europe. The first, in Kiev from the 20-21 August 2018, was with specialists from the Ukraine and the French embassy to discuss the prosecution of environmental criminal activity and included an overview of ENPE and the work we are currently undertaking to address environmental crimes. This was followed by a meeting with UNDC in Vienna where Jean-Philippe presented to a number of crime experts, specialists and experts on how organised crime is tackled in Brazil, including an overview of ENPE’s objectives and activities.

### **ENPE representation at DG Environments Environmental Compliance Assurance (ECA) workshops**

ENPE has been well represented at two important ECA workshops, hosted by the Directorate General for Environment at the EU in Brussels. The first, on 08 June 2018 was focussed on Complaints Handling, and was attended by Sara Boogers, a supporting member of ENPE and a Belgian prosecutor specialising in Environmental Crimes. The second, on 03 July 2018 was focussed on Environmental Crimes and was attended by ENPE President Anne Brosnan, Vice-President Rob de Rijck and LIFE-ENPE Working Group 4 member Ksenija Dimec, a judge from Croatia. Both workshops were well attended and provided fascinating discussion and outputs which have been fed into these two key areas of the ECA initiative. We are strongly committed to the initiative and would urge our members to find out more, including ways of participating, through the following link:

[http://ec.europa.eu/environment/legal/compliance\\_en.htm](http://ec.europa.eu/environment/legal/compliance_en.htm)

## ENPE article in EU Life programme wildlife crimes publication

ENPE Secretary General Lars Magnusson, as the Chair of the LIFE-ENPE Working Group focussing on Wildlife Crime, is featured in an article in the latest EU LIFE programme's LIFE & Wildlife crimes publication. As well as coverage of the recent successful training workshop held in Segovia, Spain, the article expands on the wider work that ENPE does to tackle wildlife crimes. The article can be found in the June 2018 edition (p50-51).

For more information, please see:

<http://ec.europa.eu/environment/life/publications/lifepublications/index.htm>

## LIFE-ENPE and LIFE NATURA-THEMIS

On 26 June 2018, Shaun Robinson, ENPE Project Manager, attended a meeting with the LIFE NATURA-THEMIS project organised by their project co-ordinator Dr Michalis Probonas, at their office at the University of Crete, Heraklion.



As well as presenting on the ongoing work of ENPE and the LIFE-ENPE project to the NATURA-THEMIS team, Shaun heard from team members on their specific actions in tackling environmental crimes in Crete. Awareness raising of the prosecution of environmental crimes on the island and of the need to report environmental crimes is a vital aspect of the project and recent TV campaign has been very well received. The link to one of their very effective short TV 'spot' articles to support their campaign can be found here:

<http://www.lifethemis.eu/en/content/project-s-tv-spots-english-subtitles-air>

Our links with the LIFE NATURA-THEMIS project continue to strengthen in accordance with the Declaration of Co-operation signed by both projects in 2016. We are also very grateful to the project for jointly organising and hosting our annual conference in Crete in October this year.

## INTERESTING CASES

### ITALIAN ORGANISED CRIME GROUP ILLEGALLY TRADING BIRDS FOR RESTAURANTS IS DISMANTLED BY SPECIALIST ANTI-POACHING UNIT

Photo taken from EUROPOL website



Protected species of birds, including song-birds were being illegally caught and traded by the thousand by an organised Italian crime gang. The operation was successfully dismantled however, following the collaborative work of specialist Carabinieri in Reggio Calabria, southern Italy. European Police Agency EUROPOL provided expert intelligence to assist in this success against the gang. For more information please

see:

<https://www.europol.europa.eu/newsroom/news/protected-birds-%C3%A0-la-carte-thousands-of-rare-birds-illegally-sold-for-gourmet-food-business-in-italy>

### Three cases from the Czech Republic

In January 2018 a company running an incinerator plant, and the director of the company were found guilty of the crime of “endangering of the environment” committed during the years 2013 and 2014. In this period the company incinerated, amongst others, capacitors containing PCB by using temperatures lower than allowed, which resulted in contamination of the air by toxic dioxins. An aggravating factor, which the court mentioned, was that the company committed the crime to such a large extent, and by neglecting an important duty. The director was sentenced to a fine of 100.000 CZK (approximately 3900 EUR), the company to a fine of 200.000 CZK, and the court ordered that the sentence was published as a judgement in various newspapers. The judgement is final.

In September 2018, the former mayor of a village was found guilty of illegal waste disposal. He committed the crime between the years 1998 to 2015 by letting persons and companies dispose of waste (in total, 58000 tons) in an unpermitted former land-fill (no longer permitted for use as a land-fill). This resulted in danger to the soil and water and expenses of 1.280.000 CZK (approximately 50000 EUR) were needed to dispose of this waste. The accused was sentenced to a conditional sentence of 10 months of imprisonment. The judgement is not yet final.

The Czech Environmental Inspection and Customs department reported on the arrest of three people and seven house searches conducted in July 2018 in connection with the illegal trade in tigers and tiger products. As a result of almost two years of analysis and investigations, three men were accused of illegal wildlife trade and taken into custody. As of 2016, tiger products, (above all tiger bouillon, used in traditional Chinese medicine), have been found

smuggled via Prague airport to Asia. Looking for the place of origin, customs found one of the accused, an animal breeder and owner of a number of tigers, and two men who killed and dealt with the cadavers. A tiger was found shot dead, through the eye, so that the fur remained untouched. The rest of the body was going to be used for the bouillon, the same as in the case of two other documented killings. The case is still under investigation.

For more information on this and the other two cases reported above, please contact Katerina.Weissova at [KWeissova@vsz.pha.justice.cz](mailto:KWeissova@vsz.pha.justice.cz)

## **Recent UK Environment Agency cases (waste crime)**

### Steven Wayne Morgan

Between April and August 2015 Steven Wayne Morgan, operated a waste storage facility on land at Middlemore Lane, Aldridge, Walsall, which was not authorised by an environmental permit, namely a non-exempt waste operation for the deposit, storage and treatment of waste, contrary to Regulations 12 (1) and 38 of the Environmental Permitting (England and Wales) Regulations 2010. The operation involved the storage and treatment of wood waste and construction & demolition waste.

The Court found that the offending was deliberate and had caused harm.

Morgan was sentenced to a 2 year community order with a requirement to complete 250 hours of unpaid work. He was also ordered to pay £17,000 in prosecution costs and the Victim Surcharge of £60.

A confiscation order was made depriving Morgan of the benefit of his particular criminal conduct in the sum of £54,415.33. Morgan has three months in which to satisfy the order. The default period of imprisonment for non-payment was set at 12 months.

### B & M Elkin and Sons Ltd

On 17 September 2015 a report was received of water pollution of the Gayton Brook, Milwich, Staffordshire. Investigations revealed that farm slurry had escaped from a slurry pit that had breached and overflowed. The effluent ran across the farm and adjacent fields and into the Gayton brook killing approximately 300 fish including brown trout and grayling. Invertebrates were also detrimentally affected. The area is a Nitrate Vulnerable Zone. The incident was due to the failure of the slurry pit. The pit was inadequate in size to contain the slurry (half the size required).

On 30 June 2016 a second incident occurred. Farm effluent entered the Wheatlow Brook (which runs into the Gayton Brook). This was a result of land spreading on wet land and not being aware of land drains. No fish kill occurred on this occasion.

The company was sentenced to pay £7,120 in fines. The company was also ordered to pay £7,100.92 in Prosecution costs and the Victim Surcharge.

## Ryan Colson and Colson Transport Ltd

This case related to breaches of an environmental permit from May 2015 to March 2016.

The Court imposed total fines of £38,000. £34,000 against the company and £4,000 against Mr Colson personally. The Court further awarded prosecution costs of £33,000 and ordered payment of the Victim Surcharge of £120.

In respect of each charge against the company the Court found the following:

Charge 1 – failing to operate the site in accordance with the working plan – some harm was found and culpability was assessed as negligence going into recklessness.

Charge 2 – storing waste outside the permitted area, but on site – low level harm and negligence;

Charge 3 – storing waste in excess of the height of the bays – some harm caused and a reckless incident.

Three charges were also brought against Mr Colson in his capacity of director of the company, which reflected that the company's offending had been committed with his consent, connivance or as a result of his neglect.

For more information please contact Tom Ledden at the Environment Agency, England at:

[Tom.Ledden@environment-agency.gov.uk](mailto:Tom.Ledden@environment-agency.gov.uk)

## **REGIONAL CASES FROM MEMBERS**

ENPE's Supporting Member, Carla Campanaro, from Italy has sent in a report of a recent challenge to the proposed enactment of regional law in Lombardy regarding hunting of birds protected under the Birds Directive (2009/147/EC). Lombardy regional law regarding annual hunting seasons and the capture of wild birds for sale routinely allows derogations from endangered species protection which it is argued breach European law. In the past challenges have been raised against such laws but delays in the court process mean that the cases only come to court after hunting seasons are closed. The Court of Justice of the European Union has also found Italy in breach of EU law as a result of Lombardy's regional hunting laws, but again only retrospectively. This year for the first time, action from numerous quarters has meant that members of the Lombardy regional council have declined to enact the law. Consequently, it may be hoped that greater protections will be in place for wild birds and less ambiguity for prosecution of individual hunters engaged in killing protected species.

For more information, please see the links below

[https://www.corriere.it/animali/18\\_ottobre\\_02/stop-caccia-deroga-lombardia-vittoria-associazioni-animaliste-818e0890-c64c-11e8-9c9d-1a34fa855d35.shtml](https://www.corriere.it/animali/18_ottobre_02/stop-caccia-deroga-lombardia-vittoria-associazioni-animaliste-818e0890-c64c-11e8-9c9d-1a34fa855d35.shtml)

<https://www.milanotoday.it/attualita/caccia-deroga-voto-regione.html>



## ENPE website crimes database

As a reminder, we welcome submissions for inclusion on the ENPE crimes database. The database is part of the ENPE website <https://www.environmentalprosecutors.eu/> and is building a collection of case law for all three ENPE working group subject areas (wildlife crime, waste crime & air pollution). The database is of a non-operational character and concerned with legal aspects only. Names of defendants and other identifying information are left out. Because the main function of the database is supporting the ENPE network of prosecutors, access to it is not public, but is subject to authorization by ENPE. Environmental prosecutors in Europe are invited to request an authorization - please contact Rob de Rijck or Lars Magnusson on [r.de.rijck@om.nl](mailto:r.de.rijck@om.nl) or [Lars.Magnusson@aklagare.se](mailto:Lars.Magnusson@aklagare.se). Case law, with identifying details omitted and together with the pertaining database keywords and a summary in English, can be submitted via the national ENPE contact points.

## Contact

If you have any questions or anything which you would like us to disseminate on your behalf, please let us know:

**Shaun Robinson, ENPE aisbl secretariat and LIFE-ENPE project manager.**

[shaun.robinson@environment-agency.gov.uk](mailto:shaun.robinson@environment-agency.gov.uk) Mob:+44 (0)7771 940690 Tel:+44 (0)203 025 2880

[www.environmentalprosecutors.eu](http://www.environmentalprosecutors.eu)



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