

4 NETWORKS DAY

Online conference

21 May 2021



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

EU GREEN WEEK 2021 PARTNER EVENT

ZERO #EUGreenWeek
POLLUTION
for healthier people and planet

Hosted by : 



4 NETWORKS DAY



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Together in the fight against environmental crime

Date: 21 May 2021

Time: 09:00 - 12:30 | 13:30 - 16:15 CET

Location: online, hosted by LIFE+ SATEC



Project BIOVAL

Judge J. Van den Berghe, EUFJE, vice-
President Court of East-Flanders,
Belgium

F. Bouquelle, EUFJE secretariat and
University of Ghent



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES Juges POUR L'ENVIRONNEMENT

EU GREEN WEEK 2021 PARTNER EVENT

BIOVAL: introduction

- Joint project of EUFJE, IMPEL, ENPE and KU Leuven
- Create a non-binding, practical instrument to value ecological damages in court
- Focus on compensation, not on sanctions / fines
- Scope: valuation of wild fauna / vertebrates
- First stage: research existing price list systems in EU Member States
- Online survey launched Spring 2020



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES Juges POUR L'ENVIRONNEMENT

BIOVAL: introduction

- Online survey of judges, prosecutors, inspectors, academics, ngo's in Spring 2020: 3 cases regarding wolf, starling and red kite
- Difficult to obtain good responses to survey from all Member States, answers were sometimes contradictory
- Request to send legislation and relevant case law
- Further personal inquiries with individual EUFJE, IMPEL, ENPE members to fill information gaps in Spring / Summer 2020
- “Red kite” exercise to get a feel with values, which criteria are used, how are values chosen, where are the problems?



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

BIOVAL: “red kite” exercise

- *Milvus milvus* - Example species
- Threats:
 - intentional: poisoning, shooting
 - unintentional effects: (large scale) logging and wood harvesting agricultural & forestry effluents - herbicides and pesticides
- Protection status: CITES Appendix II, CITES Regulation 338/97 Annex A, IUCN “Near threatened”



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

BIOVAL: “red kite” exercise

- No in depth research or double check of information received so far
- Focus on countries with a price list or similar
- Finality of lists varies: values are sometimes used for determining *fines* and sometimes for *compensation* purposes (hereinafter distinguished in *italics* where possible)



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Bulgaria

- National price register for *compensation of damage* to plant and animal species included in Annex 3 of the Biodiversity Act 2006 (entry into force 15 September 2006): milvus milvus 300 lev **(+/-150 euro)**, milvus migrans 200 lev (+/-100 euro)
- WWF Bulgaria: “probably inspired on administrative penalties in the absence of other valuation systems”



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Croatia

- “Ordinance on the *amount of compensation* for damage caused by unauthorized actions on protected animal species” (OG 84/1996); Croatian Nature Conservation Act of June 2013.
- OG 79/2002 (July 3, 2002), Ordinance amending the Ordinance on the amount of compensation for damage caused by illegal action on protected animal species
- *In addition to a fine or a court ruling*, in Croatia the offender must pay additional *compensation* for each killed strictly protected individual. E.g. red kite: **1973 euro** per killed individual
- https://narodne-novine.nn.hr/clanci/sluzbeni/1996_10_84_1504.html
https://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_79_1285.html



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES Juges POUR L'ENVIRONNEMENT

Estonia

- General rules on compensating damage to environment in Nature Conservation Act, see art 77.
- Exact rates of compensation fixed by government regulation: <https://www.riigiteataja.ee/akt/13352329> and <https://www.riigiteataja.ee/akt/13352329>
- § 27 “Rate of compensation for violation of rules for transactions and operations with specimens of animal species specified in Annexes A to D to EU Council Regulation No. 338/97” (12) The rate of compensation for violation of the rules for transactions and operations with a specimen of a class of birds not specified in subsections 13 and 14 is: 1) in the case of a live specimen, 320 euros per specimen; 2) in the case of a live specimen of a species specified in Annex A, originating in the wild, **3.200 euro** per specimen;



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Finland

- Article 59 § Nature Conservation Act: “*monetary value of a protected plant or animal shall be forfeited*, if plant or animal has been object of nature conservation offence, aggravated nature conservation offence or nature conservation violation”.
- Decree of the Ministry of the Environment 9/2002 (under revision): no value for red kite -> “closest relative specie”: black kite (*Milvus migrans*) : 1514 euro or market value if proved to be higher



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Finland: calculation method

- Finnish Calculation Method Decree 1995: values for adult species
- Values should crudely compensate expenses, to protect a species or cover costs for producing a new individual to replace a destroyed one
- Population size (P), renewal capacity (R) and need of protection (S) to which IUCN Red List Categories are applied.
- Monetary values for birds and mammals calculated as follows:

$$V = R \times S / P \times 201.60 \text{ euro}$$

- Monetary value (V) =



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Finland: calculation method

- Renewal capacity (R) (logarithm of species specific weight in grams)
- Need of protection (S) IUCN Red list categories (1994)
(S= 1 Least concern species
S= 5 Near threatened species
S= 10 Vulnerable species
S= 20 Endangered species)
- Population size (P) in country/area concerned



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Finland: calculation method

- Pairs of birds Specimens of mammals

2 <100 <200

3 101-1000 201-2000

4 1001-10000 2001-20000

5 10001-100000 20001-200000

10 100001-1 mil. 200001-2 milj.

20 > 1 milj. > 2 milj.

- Multiplier: 201.60 Euro (based on white-tailed eagle?)



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Hungary

- Protected species price list:
http://www.termeszetvedelem.hu/index.php?pg=sub_685
- Decree 13/2001 Protected and strictly protected animals
- Used for *calculation of fines, as well as for calculation of damages by civil courts*
- Taxonomy/ category/ protection status
- Red kite: "nature protection value": 500.000 HUF (criminal offence): **1397,22 euro**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Latvia

- On top of *administrative or criminal fine, loss caused to biodiversity is calculated* and goes to the state (tbc)
- Cabinet Regulation No. 281 Adopted 24 April 2007
"Regulations Regarding Preventative and Rehabilitation Measures and the Procedures for Evaluation of Environmental Damage and Calculation of Costs of Preventative, Emergency and Rehabilitation Measures"
available in English: <https://likumi.lv/ta/en/en/id/157197>
- 3 groups: 1st group: **40 x minimum wage** per individual;
2nd group: 10 minimum wage; 3rd group: 5 minimum wage
- Red kite (first group) calculation : 40x430 (minimum wage in LV in 2020) = **17.200 euro**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Lithuania

- Methodology for calculating damage to Lithuanian protected habitats and species

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.378574/asr?positionInSearchResults=11&searchModelUUID=8fa3130d-748a-415a-bbc7-0d39cf11c9d4>

- Annual adaption to consumption index – basic amounts are multiplied by 3?
- Basic amount in case of destruction of protected birds of prey and owls in Lithuania: **430 euro x 3 = 1.290 euro?**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Romania

- Areas of special bird protection for red kite (ANNEX 3 OUG 57/2007, regarding the regime of the protected natural areas, the conservation of natural habitats, of the flora and fauna)
- ART. 42 Law no.407 / 2006 on hunting and hunting fund protection
- ART. 51 Law no.407 / 2006

(1) amount of the *damages* for the damages caused to the hunting fauna by facts that constitute crimes or contraventions, established according to the annexes no. 1 and 2



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Romania

- ANNEX 2 Amount of *compensation* in the case of unlawful acts for the species for which hunting is prohibited: red and black kite : **1.350 euro**
- <http://legislatie.just.ro/Public/DetaliiDocument/67634>
<http://legislatie.just.ro/Public/DetaliiDocument/83294>



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Slovakia

- “Societal value” of NATURA 2000 habitats, protected animals and plants and trees
- *Not clear* whether values are used for calculating fine or compensation of damages
- Decree Ministry of Environment Slovakia 9 January 2003: execution decree nr. 543/2002 Nature and landscape protection: annex 32: red and black kite: **4.610 euro**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Spain

- Competence of the autonomous regions -> many different regional regulations e.g.:
- **Murcia:** Order 4 October 1988, on valuation scales of species of wild fauna of the Autonomous Community of the Region of Murcia. Black and red kite: **901,52 euro**
- **Madrid:** Order of 14 July 1987 of the Ministry of Agriculture and Livestock, which establishes the hunting assessment of game pieces and protected species of wild fauna in the territorial scope of the Community of Madrid: red kite **601,01 euro**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Spain

- **La Rioja:** Decree 25/2020 of 10 June 2020 fixes the valuation of the species of wild fauna not subject to hunting or fish farming in the territory of the Autonomous Community of La Rioja: **4.000 euro**
- **Païs Vasco:** Foral Order of 16 February 1995, which updates and sets for the purposes of sanctions and compensation, the value of the different species of wildlife: black kite : 901,52 €, red kite: **901,52 euro**
- **Navarra:** Foral Order 107/1993 5 May 1993 of the Council of territory and environment management establishes the valuation rate of wildlife species: red kite: **601,01 euro**
- **Castilla La Mancha:** Decree 67/2008 of 13 May 2008 establishes the valuation of threatened wildlife species: red kite: **18.000 euro**



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Stumbling blocks

- Are values being applied? Little case law received from respondents
- Language barrier (google translate...)
- Obtaining responses, little information from Germany, France, Sweden, Poland, Italy, UK = countries with largest breeding population
- Quality responses



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Preliminary conclusions survey

- Amounts for 1 species vary significantly from country to country and even from region to region (Spain)
- Little information on how amounts were set (except for Finland)
- Difficult to obtain information on background of criteria
- Criteria which have nothing to do with intrinsic value of the species e.g. minimum wage, general price categories e.g. for all birds of prey, use of multipliers, amount of administrative fines, other sanctions imposed on perpetrator



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Criteria suggested by respondents survey

- Population size in the region (in relation to number of dead specimens)
- Rarity of species (e.g. first breeding case)
- Reproduction capacity / “possibility to be bred in captivity”
- Age (juvenile / adult)
- Role in population: female, breeder
- Cost of restoration measures



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Criteria suggested by respondents survey

- Market value
- Conservation status: internationally, nationally, IUCN Red list
- Place in ecosystem
- Number of individuals
- Intentional (poaching) or accidental act?
- Esthetic value (e.g. red kite versus crow)
- “Efforts made by society to let species survive”, funds invested nationally / internationally spent for conservation of the species



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

BIOVAL: next steps

- Order ministudy by research institute: 1st draft of criteria / methodology: tender launched
- Series of workshops for magistrates, economists, ecologists
- Explore similar initiatives e.g. LIFE Nature Guardians: Report March 2020 proposal methodology economic valuation wildlife
 - focus on Spain; CAED project IMPEL: focus on ELD Directive (cf. infra)
- Presentation during 4 Networks Day 21 May 2021 (online)
- Next Joint Meeting Bern Convention's SFPs Illegal Killing, Trapping and Trade in Wilde Birds: 9-11 June 2021
- Budget: specific grant application IMPEL pending with EC



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

BIOVAL –Project WILDS

- DEFRA, Lancaster University
- Focus on Indonesia
- Mock trials for judges, seminars for students
- Drafting guides for plaintiffs on civil claims for protected species
- Some species cannot be reintroduced: example orangutan: increased habitat monitoring / protection (500 hectares for 1 female adult)
- More focus on / establish a list of possible remedies? Alternative remedies e.g. publication, education
- Taxa based approach vs situational approach
- Drafting guides for judges with description harm and remedies, instead of criteria / prices e.g. peatland fires?
- Collaboration: share resources and cases, invitation to workshop, meetings



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Thanks for your attention!

Contact:

jan.v.d.berghe@telenet.be

EUFJE secretariat:

farah.bouquelle@eufje.org



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

EU GREEN WEEK 2021 PARTNER EVENT