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Case Summary posted by the Task Force on Access to Justice

CITES crimes - Court of Appeal, Ghent, 7 May 2015

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| <i>1. Key issue</i> | Rights of ENGO's in Criminal Proceedings |
| <i>2. Country/Region</i> | Belgium |
| <i>3. Court/body</i> | Court of Appeal, Ghent |
| <i>4. Date of judgment /decision</i> | 2015-05-07 |
| <i>5. Internal reference</i> | Openbaar Ministerie, Vzw Vogelbescherming Vlaanderen & Bouwbedrijf Everaert Bvba v. H.v.T, A.C. & E.v.T. |
| <i>6. Articles of the Aarhus Convention</i> | Art. 9, paras. 3 and 4 |
| <i>7. Key words</i> | CITES - Enforcement of Environmental Criminal Law - Rights of ENGO - Civil Party - Moral Damages |

8. Case summary

On 27 June 2014, the Criminal Court of First Instance of East Flanders (Ghent division) in Belgium pronounced judgement in an important case of illegal trade in protected and endangered birds. The case is the result of a long and extensive judicial inquiry, including international legal cooperation between Belgium, the United Kingdom, Spain, France, Germany, Austria and the Netherlands. Four defendants have been found guilty of forgery of breeder's declarations and CITES-certificates regarding birds (of prey) listed in Annex A of the EU CITES-Regulation 338/97 (which implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) within the European Union). Eggs and chicks of the birds, mainly birds of prey among others, were stolen from the wild in the south of France or Spain, and handed over to collaborators responsible for their hatching out. The young birds were then hand-reared and ringed. Through forging of rings and breeder's declarations, the defendants obtained CITES-certificates for captive-born and bred species, which allowed them to commercialize the birds in spite of the general prohibition imposed in respect of Annex A species.

The four defendants were also found guilty of participating in a criminal organisation with international branches in Spain, the United Kingdom, Austria, Germany, France and the Netherlands. The purpose of this criminal organisation was the removal of protected bird species from their habitats, obtaining forged CITES-certificates and finally, marketing the birds. Typical, and considered evidential, of the criminal organisation was a clear hierarchy and division of tasks, the use of (police) officials and the creation of an animal zoo to attain credibility and access to the

market. The defendants were also convicted of fraud regarding CITES export permits, the failure to keep a CITES-register and the use of illegal traps and nets.

The commercial exploitation of the birds of prey was extremely profitable. Bonelli's Eagles (*Aquila fasciata*) were sold for 10,000 Euro, Bald Eagle (*Haliaeetus leucocephalus*) for 5,000 Euro, African Fish Eagle (*Haliaeetus vocifer*) for 6,000 Euro and Booted Eagle (*Hieraaetus pennatus*) for 5,000 Euro.

The leading defendant and his wife were convicted of the laundering of the profits through a contractors company. The court underlined that international trade in endangered plant- and animal species has approached a scale and lucrativity comparable to international drugs and arms trafficking. The defendants took advantage of the lack of political priority and thus limited enforcement of the CITES-regulations. In the decision the court stresses that the defendants committed a direct and irreversible assault on biodiversity. For profit, the defendants seriously undermined national and international efforts to preserve and protect these already vulnerable bird species.

The four defendants were sentenced to 4 years (1 year suspended), 2 years (1 year suspended), 18 months (suspended) and 1 year (suspended). The court also imposed fines of 90.000 euro, 30.000 euro and 12.000 euro. The court confiscated 835.800 euro of illegal gains from the trade (including real estate). All seized birds were confiscated and entrusted to the Belgian CITES-authority.

The Bird Protection Organisation was recognised as a civil party to the proceedings, but as its main claim in damages were considered to be purely moral, only a symbolic 1 euro compensation for moral damages was awarded.

The Court of Appeal of Ghent has, in its judgement of 7 May 2015, given *in absentia* of the main defendants, confirmed the judgment of the Court of First Instance, except in respect of one aspect. The Court found that the Bird Protection Organisation was entitled to full compensation for moral damages. Those damages should be estimated by taking into account the objectives of the ENGO, the affected birds, the seriousness of the offences and the scale. In doing so, the Court judged that the moral damages could be assessed *ex aequo et bono* to be € 15.000.

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| 9. address | Link <i>Corr. Gent, 27 juni 2014, Tijdschrift voor Milieurecht, 2014, 330-367</i> <i>Court of Appeal, Gent, 7 mei 2015 (n.y.r.)</i> http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/CITES_crime/BE_Criminal_Standing_judgement.pdf |
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