

Zero tolerance of illegal killing of wild birds

2012

Cyprus Report



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Birds, a European heritage of great value

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MBCC Cyprus Autumn Report (September/October)

MBCC, Migratory Birds Conservation in Cyprus acts on behalf of the millions of migratory birds which, despite their protected status under EU and Cypriot law, annually face torture and death in Cyprus. The failure of police and judicial authorities to uphold the rule of law in Cyprus is a national disgrace that we must no longer tolerate.

- The police, as the investigative body in the prosecution effort against illegal bird catching and poaching in Cyprus, continue to base their work on inappropriate training and command sequences which are out of line with national and Community law;
- The ordinary police officer in the field is severely hampered by the policy of prosecuting only those trappers caught red-handed. When made at all, charges of wildlife crime tend to be pursued without thorough investigation and without complete awareness of either the provisions of Cyprus Bird law 152(I)/2003 or the full extent of police authority;
- 50-70% of wildlife criminals reported or caught in the act leave the crime scene scot-free;
- As currently applied, the law is itself unjust, condoning and even encouraging wildlife criminals and the illegal trade in wild birds.

So far as wildlife crime is concerned, the law in Cyprus is a dead letter. A policy of zero tolerance for wildlife crime has been evoked and is urgently necessary, but at the moment Cypriot law and justice are working on behalf of the criminals.

Cyprus Bird Law 152(I)/2003 effectively made null and void by insisting on *in flagrante delicto*

Since the pre-EU accession period of 2000 – 2003 there has been no change in policing and application of bird protection law. Despite the implementation of the EU Birds Directive in national Law 152(I)/2003, wild birds have continued to be unprotected as before, because of the inefficient, haphazard and often legally inadequate actions of police and judicial authorities.

In the early 2000s police officers in the field were instructed that bird catchers must be caught in the act of putting out or using nets or limesticks: without a direct, eye witness report from the field, no charges would be brought.

This restrictive interpretation of the law from the pre-EU era failed to require further police, legal or judicial investigation of any kind; indeed it actually prevented any such pursuit of the matter (according to reports by police inspectors in Paralimni on instructions received from judges). Today, ten years after Cyprus entered the European Union and assumed full responsibility for the protection of European wildlife within its borders, this restrictive application and interpretation of the law continues to offer effective immunity for wildlife criminals, allowing them to go unmolested even when their crimes are carried out in public view, and to continue to profit from their illegal acts.

Law enforcement presents a sorry picture in Cyprus where wildlife crime is concerned, since the actions of the police actually run counter to Law 152(I)/2003, the Protection and Administration of Wild Birds and Game Act. There has been little official comment from the judiciary, simply because almost none of the thousands of cases of wildlife crime are ever brought to court.

Police officers of all the Cypriot bodies entrusted with tackling wildlife crime, both the Game Service (Thira) and Anti-Poaching Unit, follow this restrictive policy, which is totally self-defeating. Local police officers in the field have no clear mandate from the Ministry of

Justice and Order or the Cyprus Head of Police to act to deter and prosecute illegal bird catching.

Article 72(1) of the protection and Administration of Wild Birds and Game 2003

The proprietor or the person who has the responsibility or control or management of the fenced area, (in which there is a conduct of a criminal act) can be held responsible as the person who committed the offence. (Cyprus Law Office, Attorney General)

The police have taken no practical notice of this legal provision and its implications for prosecution, continuing to insist that only criminals caught in the act can be prosecuted. This permissive approach is a reprehensible misinterpretation of Cypriot law, which in fact makes landowners liable for wildlife crime carried out on their property.

The current, legally inadequate level of policing makes prosecution virtually impossible and encourages criminal elements.

After so many years, the public are entitled to wonder whether this shamefully inadequate policing is deliberate, or results from incompetence due to negligence on the part of higher authorities entrusted with training enforcement officers.

The Cypriot judiciary has also continued to be lamentably ignorant of and uninvolved in the training process on Environmental Crime instigated by the Larnaca Declaration (2011).

I regret to inform you that no Cypriot judge or prosecutor has attended or will attend one of the EU seminars on Environmental Crimes organized in 2012 by the EU Commission with the support of a consultant (EIPA). EU Environment Commission.

The Larnaca Declaration called for more effective law enforcement (including through advocacy and judicial processes), effective investigative agencies and adequate court judgements. In Cyprus, the country where they are perhaps most urgently required at European level, none of these improvements have been forthcoming.

The hard core of bird catchers are mainly prosperous landowners, who can afford to fence in orchards and olive groves to ensure the protection of private premises. They are fully aware that, as the law is currently applied, they will effectively have immunity from prosecution for acts of wildlife crime committed on such premises. It is within these fenced orchards and groves that most illegal bird catching with nets and limesticks takes place, but the police turn a blind eye and fail to enter private premises even when there is clear evidence that a crime is being committed.

As a result of this policy, the European Birds Directive has found little or no practical judicial implementation on Cyprus, so far as the prevention of the illegal killing of wild birds is concerned.

The judicial process against illegal bird trappers continues to be primitive, outdated, unjust and, above all, almost entirely ineffective.

MBCC in the field in Autumn 2012: 2 bird catchers arrested, 11 criminals unpunished

Based on our many years of experience in the field, it may be estimated that 50-70% of cases of illegal bird trapping are not prosecuted because of inadequate investigation, failures in police procedure, command processes and judicial hindrances. Year after year, the same criminals walk free from any kind of police investigation using the same ridiculous lies in their defence, and are allowed to continue to earn massive sums from the illegal trade in wild birds.

Bird catchers who are caught trapping but claim to be not guilty are usually neither arrested nor subjected to a thorough investigation, either at the crime scene or at the police station.

Despite years of active engagement in wildlife crime, much of it well-known to the police, most trappers have no criminal record.

Inadequate training of the responsible authorities and the ineffectual command process in policing have combined to enable large-scale wildlife crime to continue unabated. The culprits go unpunished and are able to commit crimes openly and repeatedly. A list of 4 cases of illegal bird catching is attached to illustrate this point.

It is worth noting that this gross inefficiency is also very costly for the Cyprus government. The running costs of both the Game Service (Thira) and the Anti-Poaching Unit are justified by the need to repress wildlife crime, but their performance is so poor that very few perpetrators are brought before the courts, while the small number of convictions obtained usually involve only paltry fines. Meanwhile, the immense damage to the Cypriot national economy caused by illegal bird killing and the untaxed earnings from the trade in wild birds continues. The environmentally and financially disastrous mismanagement of wildlife in Cyprus attracts heavy criticism from Cypriots who are fully aware of the extent of the problem. The obstinate refusal on the part of government and authorities to put an end to this scandal leads neutral observers to fear there may be an element of collusion with wildlife crime interests.

The Europe-wide financial crisis is currently pointed to in some quarters as an explanation for increased levels of bird catching on the part of the growing numbers of unemployed, with an accompanying suggestion that the phenomenon is therefore somehow more understandable. The explanation is not, however, one which holds true in practice. Most bird catching takes place on landowners' property, with their direct or indirect participation. Trapping in open areas by poorer individuals without access to private premises has decreased dramatically and is conspicuous only at the very start of the migratory season. The real lesson to be drawn from the current economic difficulties is that Cyprus simply cannot afford the immense financial drain caused by wildlife crime in terms of environmental damage, unregulated and untaxed trade, or the loss of tourism earnings from visitors who are either appalled by the phenomenon of bird killing or simply no longer attracted to the degraded coastline and countryside that environmental mismanagement has created in Cyprus. And of course the terrible damage to Europe's bird populations wrought by Cypriot poachers comes at enormous cost to every EU member state, given the vast sums of taxpayers' money spent on conservation.

Relaxation of Law 152(I)/2003 by amendment in parliament

In a move designed to weaken the effectiveness of national bird protection legislation still further, in July 2012 an extraordinary Plenary session of the Cypriot Parliament approved an amendment which replaces the previous penalty for use of calling devices in bird killing, which was a court conviction, with a much 'softer' regime of on-the-spot fines for poachers using the devices.

Bird calling devices are an illegal and deadly tool in bird catching and shooting, but are in widespread use in Cyprus. The lethal effectiveness of tape and digital decoys causes the death of hundreds of thousands of protected birds each year.

How did it come to pass that a legally elected Parliament decided to legislate in favour of illegal bird killing? Are poachers in the majority in parliament, or did the Cypriot MPs simply fail to understand the lethal use of calling devices, and their usefulness to the criminal element in Cyprus?

Calling devices are used by illegal trappers and shooters in large quantities, and mainly at night, at varying times and intervals. The devices can be programmed, or even operated remotely, so their owners are frequently not present in the field with the device, or even nearby. In the daytime, the devices are mainly used inside fenced orchards and groves. Together, these circumstances mean that it is almost impossible for the police to catch a person using a device and impose a fine on the spot. Even if devices are found and impounded, their cost is relatively low, so the culprits concerned will soon be able to return to their regular criminal activity: without the deterrent of a court conviction and criminal record for offenders, Law 152(I)/2003 has effectively been emasculated as a protective instrument against the use of calling decoys in wildlife crime. Yet these devices are undoubtedly one of the most lethal and commonly used items of equipment in the on-going massacre of wild birds on the island.

The level of public awareness of this issue in Cyprus is not high, partly because the press appears systematically to under-represent opinion opposing hunting interests. But the amendment to Law 152(I)/2003 must not go unchallenged by either the Berne Convention or the European Commission - DG Environment.

Bird protection with MBCC during autumn migration – 22 September to 21 October 2012

Reading through our annual reports since 2002, one may note the striking changes in bird catching patterns that have taken place in our operational area of the island, Cape Greco and the South-East Peninsula.

It is reassuring to note that the presence of bird catchers working in open areas, formerly such a blatant practice during migration, has fallen off considerably. Systematic field campaigns and investigative work by MBCC and other groups over the years have brought this kind of illegal trapping largely under control. Trappers in the open are less numerous than before, and tend to disappear fairly quickly.

Unfortunately, however, a determined hard core of trappers, made up for the most part of farmers and landowners, has continued unchecked, both during and after EU accession. The hardcore trappers have in fact gone from strength to strength, fencing in orchards and groves and even enclosing large areas of countryside, since the EU Birds Directive was incorporated into Cypriot legislation by Law 152(I)/2003. The building of fences around private property has effectively afforded them immunity from prosecution for wildlife crime. Any poacher need only build a fence around part or all of his land, and the current, totally inadequate policing of wildlife crime will allow him to continue the illegal killing of thousands of birds, undisturbed and without fear of prosecution.

Our work has long been focused chiefly on detective investigation and observation of the criminal activities carried on by hardcore trappers in Cape Greco and the South-East Peninsula (Paralimni - Protaras - Aya Napa). Trappers on private land were highly organized this autumn, constantly varying their calling devices intervals and catching times. This required our conservation teams to react accordingly, and involved us in a great deal of night-time volunteer work.

By mid-October very few lime sticks were being found, although migratory birds were still passing through. We suspected that trappers were fearful of putting lime sticks out for fear they would be impounded, perhaps only using them when they themselves were present. Hopefully this must have reduced their catching time considerably, allowing many birds to escape unharmed. Trappers on private premises were also certainly being more careful, in their illegal activities, to avoid unwelcome attention from conservationists from MBCC and German-based group CABS, which both had active teams in the field.

We collected:

Loudspeakers	13
Large mist nets	2
Lime sticks	1,000
Live birds	20
Dead birds	1

We witnessed:

Bird catchers arrested	2
Bird catchers unpunished	11





Willow Warbler on limestick.





MBCC Cyprus Spring Report

MBCC figures for the successful spring 2012 operations in the Cape Greco area and south-easterly Peninsula (some 3000 ha)

We collected

Loudspeakers	21	
Large mist nets	1	
Limesticks	3268	
Live birds	257	protected European passerines and Kestrels
Dead birds	81	



Quivers with limesticks and a lure decoy

Introduction

The EU Birds Directive is circumvented and in practice negated.

Over a period of many years the MBCC has realized that fenced gardens are so hermetically sealed that it is impossible to see into these properties and that what takes place behind dense and high bushes or cloth screens. The procedure employed by the local police for entering these gardens is so laboriously implemented that, even when trapping with lime sticks or nets is strongly suspected, we are rarely able to establish that the illegal traps are in place. Officers of both the police and the Game Fund appear not to be properly conversant with Article 72(1) of the Republic of Cyprus Law and Article 16 of the Cyprus Constitution in respect of fenced properties so that mishaps are programmed from the start

In practice the Birds Directive on the conservation of wild birds (79/409/EEC) is not complied with.

As far as local police officers and Game Service wardens are concerned a former Republic of Cyprus provision and Article 16 of the Cyprus Constitution appear to be written on tablets of stone. This means in practice that unless illegal bird traps or criminal trapping activity are clearly visible from the outside (eye witness), the law enforcement officers follow a policy of not entering these properties.

As the Birds Directive is to date not included in instructions given to the police, and does not have a fixed place in the overall design and structure of Cypriot law, its stipulations are unknown by the local police officers .

Conclusion: As long as the Cyprus Law 152(I)/2003 is not allocated a fixed place in the structure of Cypriot law, and its requirements are not harmonised in complete detail with Article 72(1) of the protection and Administration of Wild Birds and Games Act 2003 and Article 16 of the Cyprus Constitution, the law enforcement agencies will continue to subordinate its conditions to former well-worn provisions.

The proprietors

Ignorance of the police officers or not knowing the law in its full extent, have reinforced the proprietors of fenced areas in their opinion that they alone are lord and master within these properties, to do or permit whatever they please.

From 2004 onwards (following entry into the EU), the remarkable increase in the number of fenced gardens was noticeable. On the face of it, it appeared that the owners deliberately fenced in their gardens in order to continue their practice of bird trapping undisturbed.

The Birds Directive has effectively no place in the structure of criminal law, thus encouraging owners of fenced properties to employ all tricks at their disposal to avoid their criminal activity being detected.

Lime sticks and nets are set out so that they are not visible from the outside. Dangerous dogs (with a warning sign) run free within the properties in order to intimidate law

enforcement officers and keep them out of the fenced areas until the owner and his assistants have had time to dismantle all illegal lime sticks and nets. The issue of a court warrant, required for entry to a fenced property with domicile, appears at times a complicated procedure and often insurmountable problem for the police as the courts and a judge are not available at all times of day and night.

The great danger of concealment

Proprietors of fenced gardens are so keen on concealing their bird trapping activities that as soon as law enforcement officers out foot in the area everyone is very much on the alert. All kinds of hidden hectic running, climbing, hiding of all the paraphernalia may start behind the bushes, unless the officers keep an alert eye on the whole fenced area while waiting for the approval of a search warrant outside. The crafty owners meanwhile often laugh up their sleeve at this stage and the frustrated officers mostly leave empty-handed

The legal aspect

Laws: Article 72(1) Provides that a gamekeeper or a member of the police force is legally authorized to enter into a fenced area, in case of suspicion of a criminal act, without a court warrant (provided it is not a part of the residence).

Furthermore, the proprietor or the person who has the responsibility or control or the management of the fenced area (in which there is a conduct of a criminal act) can be held responsible as the person who committed the offence (vicarious liability).

Article 16 of the Cyprus Constitution: If a police or Game Fund officer are suspicious of criminal activities in a certain fenced area with residence and they wish to search the premises, they have to obtain a court warrant.

MBCC activities in spring 2012 (Migratory Birds Conservation in Cyprus)

MBCC has kept its activities within the law and has lived for years in frustration as most fenced gardens, and what goes on within, is not visible from outside.

In spring 2012 we put an end to the protection of criminal activity afforded by fenced gardens, which had crept in with the tacit encouragement of the local police.

We searched completely the whole of our protected area, Cape Greco and the south-easterly peninsula, which has been a proposed Natura 2000 SPA since 2005, for illegal trapping paraphernalia, lime sticks, nets, net poles and electronic decoy devices. This included searching the 50 fenced gardens in our area. Up to 70 % of these gardens had lime sticks set out, in part in large quantities of 320, later 120 and a 100 lime sticks.

Bird trapping with lime sticks again increased noticeably in 2012. The extent of our finds of illegal traps is not only due to the general sharp increase in trapping in 2012, but also to the inclusion for the first time of fenced gardens in our search operations. In spring 2010 we

found a total of 941 lime sticks, in spring 2011 the figure was 759, but in spring 2012 3,268! This record result is due to the fact that we in the main searched very intensively for illegal material, but also, for the first time and with heavy heart, took the law into our own hands **to prove how necessary a radically different policy needs to be pursued in respect of fenced gardens** and bird trapping in relation to Article 72(1) of the Republic of Cyprus Law and Article 16 of the Constitution. To date no one has cared about these gardens. The owners enjoyed the privilege of untouchable lack of responsibility.

The responsible law enforcement agencies

No one paid attention to the fenced gardens. Nobody showed interest or the sense of responsibility for the extended criminal activities in these areas. Neither the police nor the Game Fund conducts large scale operations. No Cypriot law enforcement officers systematically check the fenced areas despite the over 70 % criminality rate in these areas. The police claim either that they do not have sufficient personnel, or that the Game Fund is responsible. The MBCC is not taken seriously and we were kept waiting from one to four hours for police assistance.

The Birds Directive is still not in force after almost 10 year's membership of the EU.

An initial breakthrough

From the beginning of April the MBCC independently gathered complete information on the spread and the precise extent of bird trapping on Cape Greco and the south-easterly peninsula areas in spring 2012. As long as we remained within the law we found no police unit or station prepared to give us their full support in searching the complete area in order to establish the full extent of criminal activity. MBCC were the only organisation that intensively searched the whole of the area for signs of criminal bird trapping. We were severely hindered in our work by the lack of lawful authority with complete access to all areas.

For the first time it was a great blessing for both bird protection organisations MBCC and CABS (Committee Against Bird Slaughter) that the Cyprus Police Anti-Poaching Squad supported us for several days in April and May. For the first time we were able to immediately identify all places of criminal bird trapping activity. We were able to evaluate the 50 fenced properties, in 70 % of which limesticks are set out.

Together with the Anti-Poaching Squad we were able to expose fenced gardens with 100 to 320 limesticks each and repeatedly remove 120 or 100 limesticks from the same garden.

We were able to dismantle and collect in the illegal trapping paraphernalia. The danger of physical violence on the part of the bird trappers was small. We achieved many more arrests.

Acknowledgements

Our heartfelt thanks go to the Cypriot Government, the Minister for Justice and Public Order Mr Loukas Louka and the Cyprus Chief of Police Mr. Michalis Papageorgiou for the generous

support provided by the patrols of the Anti-Poaching Unit during April and May 2012. Our special thanks also go to the officers of the Anti-Poaching Squad under the leadership of Sergeant Andreas Antoniou

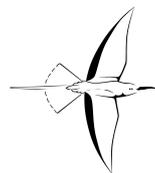
Our concerns and requests for autumn 2012

We strongly appeal to the Ministry for Justice and Public Order and Cyprus Chief of Police for the provision of a patrol of the Anti-Poaching Squad to accompany us during our stay on Cyprus from 24 September to about 10 October 2012. There is a lot at stake for us. If we again have their support we can also venture into more bird trapping areas that are otherwise too risky and dangerous for conservationists.

We are aware that the EU presidency demands a great deal of your effort. Nonetheless we hope that the pursuit of crime is still kept up.

We plead for support from your force in autumn 2012.

We support the global ecology movement.
We respect and love nature and all that is.
We protect the small birds on migration that are
Decoyed, tortured and killed by the millions, for greed, in Cyprus.



M B C C

Migratory Birds Conservation in Cyprus

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Gwatt, 18 November 2012