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Perspectives

LEGAL ASPECTS OF MEDITERRANEAN MONK SEAL (*MONACHUS MONACHUS*) CONSERVATION IN GREECE

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In contrast to other rights that our legal system deems worthy of protection (such as personal property, physical integrity, copyrights etc), the right to a healthy and functional environment presents a peculiarity. It is not directly actionable in the way the other values mentioned above are. If your neighbour, for instance, has a special weakness for listening continuously to "Methods of Mayhem", thus not permitting you to work, relax or sleep, there is a way to protect yourself: the legal system gives you the right to take legal actions against him in order to stop this behaviour. If somebody, however, kills an endangered species or if the state does not take measures to protect a habitat of outstanding beauty, what can a citizen do to protect his given right to a healthy and functional environment?

From the end of the 1970s, when the plight of the Mediterranean monk seal (*Monachus monachus*) became a focal point of interest for conservationists around the world, it was evident that a strong legal framework was urgently needed in order to save the remaining populations of this elusive species. Most important was a legal framework that would not only ensure the survival of the monk seal within national boundaries, but also one that would promote international cooperation and guarantee the survival of the species within its entire distribution range.

Since then, Greece, like most other countries with Mediterranean monk seal populations, has signed several conventions that include protection measures for the species. Considering, however, the number of pages devoted to describing the ways our natural heritage in general and the Mediterranean monk seal in particular is protected, and the fact that monk seal populations in Greece continue to decline, one tends to wonder if all these laws are worth the paper they are printed on. Bearing in mind, furthermore, the fact that most people usually have difficulties in understanding legal jargon and generally feel alienated from our legal system, it seems highly appropriate to give a simplified picture of the legal framework that defines monk seal conservation in Greece. A framework that, if implemented and enforced properly, could become a cornerstone in the survival of the species in our country.



Scales of Justice (© Angelos Sanopoulos)

The Mediterranean monk seal is protected in Greece on three different levels: the international, the European Union and the national level.

Protection conferred by international law

In international law, conventions are the equivalent of national laws: since there is no international parliament, where laws could be issued, binding rules that govern international relationships take the form of an international convention. The Vienna convention on the "Law of Treaties", which was signed on the 23rd of May 1969 and ratified by Greece through the PD 402/1974 regulates all matters relating to the relationships between the contracting parties, unless explicitly agreed otherwise. On the level of international legislation, Greece has signed and ratified a number of international conventions regarding the protection of endangered wildlife and the natural heritage. Of particular importance for the protection of the endangered Mediterranean monk seal are the following:

1. **The Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES** (Washington, 3/3/1973, put into force 1/7/1975, ratified by law 2055/1992, OG A 105). According to the regulations of CITES, trade in "Appendix I" endangered species, such as the Mediterranean monk seal, is strictly forbidden.
2. **The Berne Convention on the Conservation of European Wildlife and Natural Habitats.** The

Convention, which was signed in 1979 and ratified by Greece in 1983 (Law 1335/83, OG A 32), places the Mediterranean monk seal under strict protection from intentional killing and disturbance, and requires the establishment of special conservation areas.

3. **The Convention on Conservation of Migratory species of Wildlife** (Bonn 1979, ratified by Greece through Law 2719/1999, OG A 106f). Contracting parties to this Convention agree to conserve critical habitats and promote international cooperation in order to reduce the risk of extinction of the Mediterranean monk seal.
4. **The 1992 United Nations Convention on Biological Diversity**. Although this Convention does not explicitly refer to the Mediterranean monk seal it urges contracting parties to develop national programmes that will safeguard the natural heritage and the biological diversity of each contracting country (Wilson et al. 2001).
5. **The Convention for the Protection of the Mediterranean Sea against Pollution**. On the initiative of the United Nations Environmental Programme (UNEP), countries from around the Mediterranean met in 1975 in Barcelona in order to create a framework known as the Mediterranean Action Plan, whose goal was to halt the rapid degradation of this enclosed sea. The legal framework was formalised a year later with the establishment of the Barcelona Convention, and entered into force on 12 February 1978.

Article 10 of the Barcelona Convention states that “the contracting parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats in the area to which the Convention applies” (UNEP 2003).

However, by 1985, when the contracting parties met in Genoa in order to assess progress made during the first decade of the Plan, it was already clear that nothing had been done to ensure that the ratifying parties had started to implement the measures expected of them. It was here that the contracting Parties included among their priority targets (to be achieved within the following decade) protection of the Mediterranean monk seal. The Action Plan adopted, foresaw the commitment to:

1. Reduce adult mortality
2. Establish a network of marine reserves
3. Promote the additional, urgently needed research, data collection and rehabilitation of the species
4. Initiate information programmes
5. Coordinate, review and finance the management of this endangered species (RAC/SPA 2003)

Keeping in mind the number of international conventions signed and ratified by Greece, two issues are important; firstly the position of international legislation in the Greek legal framework and secondly, the policing of these rules.

According to the Greek constitution (Article 28 § 2, 3) regulations of international conventions are not automatically incorporated into national legal statutes, but require a certain procedure to achieve integration. This procedure includes ratification by law and consequent publication, followed by the official declaration by the Head of State of the consent to be bound by the respective treaty (Roukounas 1982, Venizelos 1991). If one imagines the Greek legal framework as a pyramid, with the constitution at the top and the national (typical) laws at its base, then the regulations of international conventions are located somewhere between the two. Consequently, regulations of international conventions have hyper-legislative power which in “plain Greek” means that, in the case of contradiction, differentiation or deviation between a national law and convention regulation, the latter shall apply.

Article 26 of the Vienna Convention refers to the principle of “pacta sunt servanda”, according to which the binding rules of an international convention have to be followed from the moment the convention goes into force and has been ratified by law. If, for instance, Greece has taken up the commitment to protect the Mediterranean monk seal, it has to do so from the moment it ratifies the relevant convention. Bearing in mind, however, the number of conventions Greece has ratified already in this respect, the question that automatically arises is why Greece has not been held accountable for its non-compliance to international regulations. Is there anything one can do to force a country to abide by the rules it has agreed upon?

The utterly discouraging answer is that it is extremely difficult to compel a nation state to do anything. The reason for this is that international rights, unlike national rights which can be immediately enforced in court, are usually perceived as aspirations, instruments of general supervision and ultimate safety nets (Anderson 1996). Non-compliance of a citizen to national laws, allows the state to exercise its own enforcement mechanisms – police, judicial bodies – thereby enforcing compliance.

If a state, however, does not comply with the international laws it has agreed upon, there is no legal recourse or mechanism – international police, for example – that can force it to do so. From this point of view, international law is, therefore, woefully incomplete, and is the reason why it is so often abused.

The only way to oblige a state to act in one or the other direction is through diplomatic consultations, and lobbying by other governments and ecological organisations. These actions, however, can by no means be regarded as legal in nature, which leaves the private citizen with an extremely limited field of options on this level.

Protection conferred upon by laws of the European Union

In regard to its juridical power, community law is directly applicable and does not require, therefore, the equivalent procedure of ratification. As with international law, it is located within the pyramid of the Greek legal framework above national laws. The most powerful tool in the protection of the natural environment and of endangered species, in particular, is Council Directive 92/43, the so-called "Habitats Directive". Its main aim is to create a coherent network of protected areas (Special Areas of Conservation – SAC) for species listed on Annex II of the Directive. The establishment of this network, which is collectively known as the "Natura 2000" Network, has created a powerful momentum for the establishment of protected areas for the Mediterranean monk seal in Greece. Based on extensive research in the 90s, three strategically located island complexes (Fournoi, Kimolos, Karpathos) have been selected for inclusion in the Network (Adamantopoulou et al. 2000). The recent initiation of a LIFE project in the latter two areas for the protection of the Mediterranean monk seal, emphasizes the potential of this legal tool for the conservation of endangered species in our country [see [LIFE funding for Natura 2000 areas](#), TMG 4 (2): November 2001 and see [Natura 2000 areas continue to attract support](#), TMG 3 (1): May 2000].

The significance placed by the European Union upon including environmental protection in community policy is evident through the considerable scope of action provided to its citizens in regard to the environment. Within the framework of community law a citizen has, according to Council Directive 90/313 on the Freedom of Access to Information, the right to information held by public authorities on issues relating to the environment. This Directive was embodied in the Greek legal system through MD 77921/1440 and foresees the possibility of a citizen requesting information (even without providing proof of a legal interest) from public authorities on such matters. At the same time it also constitutes the obligation of the latter to respond to such requests. In cases where public authorities fail to respond, the citizen has the right to take legal action against them. The main aim of this Directive has been the more direct involvement of community citizens and public interest groups in the protection of the environment.

Although it is still difficult for European citizens to participate effectively in the decision-making of the EU, certain efforts have been made to increase the level of participation. As a result, the European Parliament, which maintains a large and active environmental committee, often organizes public hearings on environmental matters to which environmental organizations are regularly invited. However, despite the possibilities provided to access information and participate in policy-making, our main focus remains the potential of legally challenging the state through the provisions of community law (Douglas-Scott 1996).

As with international law, such action is undeniably difficult both for individuals and organisations. The main reason for this is that most Community environmental legislation takes the form of Directives, which are addressed to Member States (1) and not individuals. As a result, it is impossible for private citizens or environmental groups to bring a legal challenge to the European Court.

The EU Convention foresees in Article 173 the possibility of appealing to the EU Court of First Instance against actions of community authorities, but only after certain requirements have been met. The strict interpretation of the fulfilment of these criteria by the European Court has so far impeded law suits focusing on the protection of the natural environment in general (e.g. C-321/1995, Greenpeace).



Failure to protect loggerhead turtles and their breeding habitat on Zakythos has resulted in summary judgements against Greece in the European Court.

A final measure which, however, again does not fall within the scope of civil legal action, is the right to make formal complaints in writing to the Commission, when Community environmental law is violated (Article 226 (ex 169) of EC Treaty). It is, however, at the discretion of the Commission if it will commence legal action against a Member State. Nevertheless, sometimes, particularly when the complaints are numerous, this procedure can be quite effective.

One case, of particular importance for the conservation of the Mediterranean monk seal, involved the establishment of a protected area for the loggerhead turtle on the Greek island of Zakythos. Following numerous complaints by environmental organizations that the habitat of the endangered loggerhead turtle (*Caretta caretta*) at Laganas Bay was not being adequately protected, the European

Commission commenced legal action against the Hellenic Republic and condemned Greece for failing to fulfil its obligations to protect the species. In the wake of this legal action, the Greek government set up, in record-breaking time, the National Marine Park of Zakythos, and created its management body [see [Challenge in the Ionian](#), TMG 5 (1): May 2002].

Protection conferred under the Greek legal framework

On the national level, a discussion has commenced lately in our country regarding the nature of the right to a healthy environment; a right that is considered at a constitutional level as a third generation right. One of its most solid foundations is Article 24 of the Greek Constitution, which is regarded as one of the most innovative and forward-looking European constitutional provisions. This law defines the protection of the Greek natural heritage as a basic and indispensable parameter within the execution of every public/private activity, plan or project. Moreover, it is regarded as the supreme constitutional obligation of the State, which must concur with the relevant principles and requirements being set out both by the international and community sector (Kritikos 2002a).

Based on this right and strengthening its position within the Greek legal framework, the Council of State of Greece has repeatedly found that, even when there is no specific rule, the administration has the obligation to take into account the need to protect the environment, to take appropriate measures towards that aim and even to distance itself from issuing decisions that might have a negative impact upon it (i.e. Decisions 2006/1981, 412/193, 2282/1992) (Tachos 1995).

As with legal actions on the international and community level, challenging decisions and actions of the state on the basis of national legislation is not easy. Greek citizens have the right to challenge the state and request the annulment of administrative acts that could have a negative impact on our natural environment. In several of such decisions, the Greek Council of State has given environment rights the character of a "relative" *actio popularis*. Usually, in order for a citizen to file a lawsuit in court, he must prove his direct and personal connection to the action he is attempting to stop or influence, thus making it impossible for a resident of Athens, for example, to take legal action against the construction of a large infrastructure project at the island of Crete.

According, however, to the aforementioned interpretation of the *actio popularis*, the Supreme Court has accepted that the right to take legal action is possessed also by every individual or public body as long as there is a defined connection between them and the place where the degradation of nature is taking, or is bound to take, place in the future. This interpretation of the law allows an NGO based in Athens and which has, according to its founding declaration the aim of protecting the environment, to take legal steps against the planned construction of an infrastructure project that will negatively affect the environment throughout Greece.

Making use of the abovementioned rights, the Supreme Court overruled actions of the administration which were causing degradation of wetlands protected by the Ramsar convention (2343/1987, 1342/192, 3953/1995). In this respect, regulations of international conventions are particularly important, since judges always take them into account when issuing a decision.

Finally, one also has to investigate the opportunities available to a citizen when the state neglects to act in the ways legally required of it. Unfortunately, whether or not the Greek state implements certain laws is again up to its own discretion, and will largely depend on the economic, political and social circumstances prevailing at any given moment in time.

A "classic" example of this is the National Marine Park of Alonissos - Northern Sporades, which was created by a Presidential Decree in 1992, in order to protect one of the largest Mediterranean monk seal colonies in Greece. More than a decade after its creation, the Park still awaits the formation of a management body in order to function as intended, a delay that has only exacerbated uncertainty and local political and economic differences.

In contrast, and due to external legal "pressure" from the European Union, the management body of the newly founded National Marine Park of Zakynthos was created almost "overnight".

As a legal action of last resort or "despair", a citizen or an NGO might request from the civil courts an injunction to prevent the state from issuing these administrative decisions that are dictated by the international, European and national legislation for the protection of the species.

Such an undertaking would, however, be an extremely challenging legal action, primarily because it would constitute a very radical interpretation of Greek laws. This kind of legal procedure is not clearly provided at present, as for example, are lawsuits against someone who causes an accident by careless driving. Furthermore, the success of such a legal action would very much depend on the interpretation of the law by the judge, his attitude towards environmental issues and his willingness to promote legal thinking.



Although established way back in 1992, the National Marine Park of Alonissos - Northern Sporades still awaits the formation of an active management body, as well as the design and implementation of a coherent management plan.

From the courtroom to the classroom: a course of action for environment-friendly citizens

Challenging the state on the international, community and national level for actions (or inactions) against the environment is obviously more complicated than one would like. Without wanting to discard the possibility that an expert team of lawyers might find a loophole in the legal system that would force the Greek state to take action to meet its perceived obligations (a highly costly and time-consuming procedure), we believe that the manoeuvring space available for private citizens and NGOs is rather limited.

It seems, therefore, far more appropriate that the cause of the Mediterranean monk seal be fought on a different battleground. Namely, the one of environmental education and public awareness. As ecological sensitivity grows around the world, different aspects of environmental law manifest themselves in our legal framework. After all, it is the legal framework that follows social development and not the other way around.

The few legal cases won until now perhaps indicate that a shy move in the right direction is underway in our country. It remains to be seen, however, if we can act quickly enough in order to provide the Mediterranean monk seal with a legal framework that will ensure the survival of the species in Greece.

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1) Although binding on the Member State to which it is addressed, national authorities have the choice of determining how and in what form to implement the Directive (Boyle & Anderson 1996).