

Environmental Law Clinic

- Report -

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1. Background

The **European Network of Prosecutors for the Environment** (hereinafter '**ENPE**') is an expert group of EU environmental criminal prosecutors. ENPE approached Professors Áine Ryall and Owen McIntyre in September 2022 looking for two students (hereinafter '**Students**') to work on a fixed term '*one-off*' ENPE project (hereinafter '**Project**'). The Project was described to involve reviewing an existing database hosted on the ENPE website, which aims to provide environmental public prosecutors with case notes on noteworthy judgments in their home EU Member State. This report ("**Report**") provides an overview of the Project and the relevant findings and recommendations of the Students.

a) ENPE – General Information

In September 2012, representatives from prosecuting bodies in seven European countries established the ENPE. The group was representative of another forty or so corresponding members across Europe who had joined an on line environmental prosecutors' network. On September the 1st 2016, the ENPE organisation was formally incorporated as a Non-Profit International Association, ENPE aisbl, following the provision of a Royal Decree, in Belgium. ENPE aisbl is registered in Scotland House, Rond Point, Schuman, Brussels and seeks to:

- support the operative work of environmental prosecutors;
- promote the exchange of information and experience of the enforcement and prosecution of environmental crime between members;
- foster knowledge of environmental law among prosecutors and promote the development of environmental criminal law as an integral part of criminal law enforcement generally;
- share experience of investigations, prosecutions and sanctions in the field of environmental criminal law;
- contribute to better understanding, implementation and enforcement of environmental criminal law;

- encourage and support co-operation between Members and facilitate capacity building in relation to the prevention and prosecution of environmental crime;
- facilitate collection of data about environmental crime across Europe and enforcement action taken in relation to environmental crime;
- identify and develop good, and whenever possible, best practice, for successful prosecutions and produce guidance, tools, common standards and approaches to the prosecution of environmental offences;
- share training programmes in relation to environmental criminal law.

b) ENPE Database

ENPE provided the following information on the ENPE database:

The ENPE database aims at supporting the network of environmental public prosecutors in the EU by providing them with relevant criminal case law and related documents from the various Member States. For the time of the Project, it covered the three areas of environmental law in which ENPE has chosen to begin its activities; Air Pollution, (Transfrontier Shipments of) Waste and Wildlife.

Originally, the database was developed within the European Network for Implementation of Environmental Law (IMPEL www.impel.eu/) organisation and dedicated to waste only, but by courtesy of IMPEL, it was transferred to ENPE in 2016. The reason for this was that as an instrument for the exchange of criminal law, it was considered to be better placed within an association of prosecutors.

The essence of the ENPE database as it is envisaged, is: a collection of criminal sentences from the Member States as supplied by prosecutors and others. The ENPE database, has two advantages according to ENPE:

- Firstly, it shows day to day cases and these decisions do not depend on preliminary proceedings;

- And secondly, it shows what penalties judges in Europe impose for this type of criminality.

Because the main function of the database is supporting the ENPE network of prosecutors, access to it is not public, but is subject to authorisation by ENPE.

The database provides criminal case law in three environmental subject areas from the various Member States in the original languages. Decisions can be found by searching by relevant terms in English and a first impression of their content can be obtained through a summary ('judgment') in English. Users who are interested in a specific case but are not familiar with the language concerned can have the full text officially translated, use Google translate or contact – if indicated – the prosecutor responsible for the case for further information.

The database is by no means exhaustive. It depends on the supplying of content by prosecutors and others and it has no connection with national case law collections. Therefore, it cannot be expected to have, for instance, all Swedish criminal case law on wildlife crime or all Spanish criminal courts' decisions on air pollution.

It is also important to note two characteristics of the case law included in the database:

- Firstly, it is non-operational and concerned with legal aspects only. This has the benefit that there are hardly any privacy issues involved. Names of defendants and other identifying information are left out. For the exchange of this sort of information, other channels are available which are subject to specific rules of law;
- Secondly, inclusion in the database does not imply any evaluation of the decision concerned. A verdict in the database on any subject is not necessarily in line with the case law of the Court of Justice and decisions in the database may conflict. The ENPE database is meant to be helpful for the exchange of legal knowledge and for legal analysis, but it does not decide matters of law.

All users of the database are kindly requested to supply relevant case law, with a summary in English and the relevant categories, to ENPE through their national contact prosecutor for ENPE or through the Working Group concerned. Details can be found elsewhere on the ENPE website.

c) Objective and Scope of Project

ENPE asked the Students to review the existing content of the database and make recommendations as to improving consistency and presentation. The scope of the Project further was to involve making connections with existing ENPE members to obtain new case notes. Further, it was to involve involve collaboration with other EU environmental agencies to explore new avenues of future collaboration, to populate and update the data base and encourage a plan of regular content generation. Three phases of the Project were envisioned:

- Phase 1 – orientation, to include database/ template review, case review, taxonomy review and update/ improve as needed;
- Phase 2 – expansion of users, to include contacting organisations, networks etc.;
- Phase 3 – involvement/ sharing with TRAFFIC to include assessing EU Twix database and insert relevant cases, with assistance from TRAFFIC.

1. Methodology

a) Phase 1

After an initial meeting with ENPE, the Students received access to the website and database.

The website and database were evaluated as regards functionality, layout, user-friendliness, and intuitiveness. As the website is going to be redesigned, such issues as (visual) design were not taken into consideration. Review was conducted looking at the website and database individually and by means of a comparative assessment with

other legal databases, that are considered quite successful (e.g. ECOLEX, BAILII, Sabin Centre & Grantham Institute Climate Change Litigation Databases & FRA, etc.). The corresponding findings and recommendation can be found in Section 2 a) of this Report.

The existing case notes and uploaded supporting documents (the judgments) where available were evaluated. The content, length and quality of case notes were assessed. Findings and recommendations concerning case notes can be found in Section 2 b) of the Report. Consequently, a template for case notes was created. A judgment that had been uploaded with a case note that was deemed particularly useful for the purposes of the database was reviewed in depth and a new case note was written based on the created template.

b) Phases 2 and 3

In order to expand usership, a list of research centres on environmental law was identified, including contact names and e-mail addresses. Two draft e-mails were created; (1) addressed to existing members reminding them of their membership and encouraging engagement, and (2) addressed to research organizations to introduce ENPE and the database and encourage contribution of case notes. Notes on phase 2 are provided in Section 3 of this Report.

The involvement of TRAFFIC was postponed by ENPE/the Students have not yet been tasked with establishing contact.

c) General

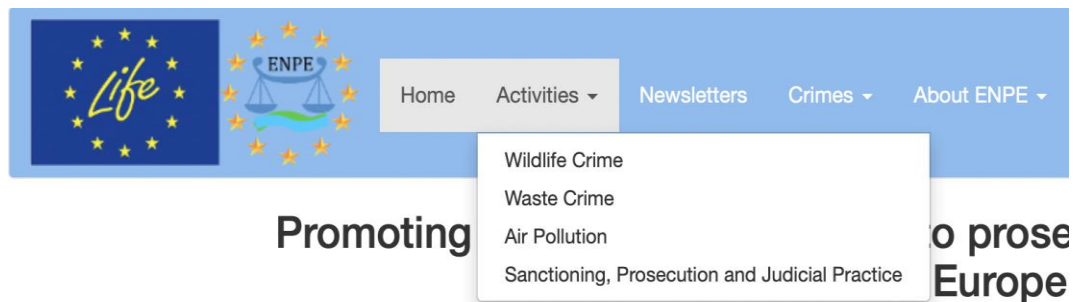
Meetings between the Students and ENPE were held to review and discuss progress and next steps. Interim reports were created and submitted to ENPE.

2. Findings and Recommendations

A number of issues were identified and recommendations developed.

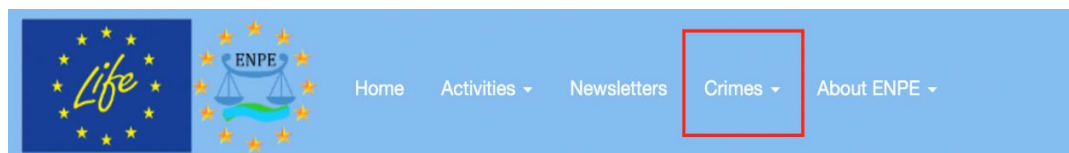
a) Website and Database in General

- The „Activities“ section contains sub-sections on past activities concerning wildlife crime, waste crime, air pollution and sanctioning, prosecution and judicial practice.



The contents of the section are outdated and need to be updated. This section may not be necessary in the heading. Considering the objective of the website and the base, the crime database should be the main focus.

- “Crimes” should be renamed to “Crime Database” as this might make it easier to find the database.



- As regards the layout of the “Crimes” section, the search bar should be more in the focus as the key element of the 'Search Crimes' section of the database.

Search Crimes

ENPE recognises and acknowledges the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) as having conceived, founded and transferred this database to ENPE.

Type of Crime **Judgment**

- Any -

Verdict

☐ Fine

☐ Imprisonment

☐ Community Service

☐ Confiscation of Assets

☐ Other verdict

☐ Acquittal

Court Level

☐ District court or equivalent

☐ High Court

☐ Court of appeal

☐ Supreme Court

Member State

Albania

Andorra

Armenia

Austria

Azerbaijan

Belarus

Belgium

Bosnia and Herzegovina

Defendant

☐ Legal person

☐ Natural person

☐ First offender

Items per page

10

Search **Reset**

While the different filters (verdict, defendant, etc.) may prove helpful, especially when there may be a lot of uploaded case-notes, a more minimalistic approach (that can be found in different, comparable databases) would be to have them included in a dropdown menu for the purposes of an 'advanced search'.

- The question arose whether or not every user has the option of editing / amending the submitted case-notes. This could pose a risk to the integrity of the database. The right to edit should therefore be only granted to (1) those who submit the case notes, (2) admins or (3) others with admin approval or approval from submitting party.
- An automatic sign out only occurs when the tab is closed. An automatic sign out when idle and website is open should be considered for safety reasons.
- Further, engagement tools for users should be considered. These might include for example a feedback platform, surveys, a questions and answers section, e-mail updates and a user analytics tool.

b) Case Notes

- The uploaded case notes differ greatly in length, style and level of detail provided. Concerning the content, a review showed that not all case-notes focus on what

might reasonably be considered the relevant points of law / legally-relevant details and factors / positions argues by the parties, etc. While this is to be expected where the case-notes are submitted by different parties, a basic template could help to achieve greater uniformity. This would help ensure greater consistency in the quality of case-notes presented. A model template based on other successful legal databases was created by the Students and is attached hereto as Annex I. It consists of two parts; (1) actual case summary template and (2) a case summary example. The case summary template provides an overview of the five parts a case note should include; a title, the facts, issues, decision and reasoning. For each of these parts an explanation is provided to aid and guide the author and ensure all important information is provided. The case summary example was written by the Students on a case retrieved from the database. It is included in the template to show the author how a case note may look in practice and how much detail is envisioned.

- While all case notes were written in English, most of the judgments are uploaded in their original language. A translation tool should be included in the website. If not technically or financially feasible, those who submit case notes and the corresponding judgments, should be encouraged to upload a translation. If translations are not provided despite encouragement, the website admins should upload their own translation. In both cases, an official translation cannot be expected and a simple convenience translation (for example using tools like google translate or deepL) should be enough, along with the original language document. A disclaimer should be included in both cases stating that the translation is only a convenience translation with no claim for correctness.

c) Other Findings and Recommendations

- After relaunch, the focus should be on the promotion of the database and increasing engagement.

- Data protection requirements should be reviewed for every partner country. While the parties are anonymous in the case notes, their names are visible in the uploaded judgments. This might constitute a breach of data protection requirements. It should be discussed who should be responsible in ensuring compliance with data protection requirements. Blackening of parties may be required. Blackening of parties might further be less work or cost-intensive than reviewing data protection requirements.

3. Notes on Phase 2

A draft e-mail to existing ENPE members was created and is attached hereto as Annex II. An explanation of the ongoing changes of the database can serve as an introduction also reminding them of their membership. Members are kindly encouraged to engage with the database and provide case notes, highlighting the importance of member contributions for the success of the database. The case note template would be attached, to aid and guide members in creating their case notes.

Usership further needs to be expanded. Research Centres on Environmental Law might provide the basis for an academic to support the development of the ENPE database and to assist in soliciting case-note contributions. As such research centres had not yet been involved by ENPE, a list was created which is included in this report as Annex IV. The Students believe that providing content to the database might be seen as a unique opportunity for researchers to increase the impact of their research activities and outputs and publish short pieces in a relatively uncomplicated manner. They would have a unique collaboration and networking opportunity, potentially leading to opportunities to participate in joint projects and would contribute to the global effort to monitor and prevent criminal environmental harm. ENPE would benefit from new content from a range of jurisdiction.

A draft e-mail addressed to research centers was created and is attached to this report as Annex III. ENPE and the database are introduced and the benefits of sharing research

findings and outputs are highlighted. The case note template would also be attached along with further in-depth information about ENPE and the database.

4. Conclusion

The Students conducted an in-depth evaluation of the ENPE website and database and the case notes and were able to make valuable recommendations based on their findings. Specifically the developed template could greatly improve the quality of case notes.

As few case notes get submitted by ENPE members, encouraging contributions and expanding usership is important for the success of the database. The draft e-mails are designed to encourage existing members and engage research centres.

Annex I – Case Summary Template

CASE SUMMARY TEMPLATE

Structure

- **Title:** This is a summary explanation of what the case entails. It should be concise, informative, and relevant to the case's core subject matter. It should also contain the case name and citation where applicable.
- **Facts:** This part includes a brief description of the background of the case. This involves the "who, when, what, where, and why" of the case. Only relevant facts should be included. To decide which facts are appropriate, we should ask the following questions; whether a particular fact was essential to the court's decision, AND whether the court's decision may have been different if a particular fact were omitted or altered. If the answer is in the affirmative, then those facts should be included.
- **Issues:** These are the main questions of law that the court must answer to decide the case.
- **Decision:** This part unveils the answers to the above stated issues as well as the verdict that the court has reached and, in the case of a conviction, the penalty imposed.
- **Reasoning:** This is a summary of the reasons that explain how the court reached its decision having regard to the applicable laws.

CASE SUMMARY EXAMPLE

(Case retrieved from the ENPE database)

R v Sissen

Title

United Kingdom case – Appeal against a conviction for trade in endangered species (*R v Sissen* [2001] 1 WLR).

Facts of the case

The defendant was a breeder of rare parrots. He was charged on indictment with four counts of being knowingly involved in the fraudulent evasion of a restriction, by virtue of an enactment, on the importation of goods, contrary to section 170(2)(b) of the Customs and Excise Management Act 1979. The prosecution alleged that in 1997 and 1998 he had imported into the United Kingdom endangered macaws, trade in which was prohibited or restricted under article 5(1) of Council Regulation (EEC) No 3 626/821 and article 4(1) and (2) of Council Regulation (EC) No 338/97¹, from Yugoslavia and Slovakia without the required import permit. The prosecution did not contend that the point of entry into the European Union was the UK; it was probably Austria. The defendant denied the offences, contending that where the point of entry into the EU was not the UK the Regulations relied on did not contain any relevant restrictions for the purposes of section 170(2) of the 1979 Act and therefore did not impose any restriction on the movement of endangered macaws between or within member states. He was sentenced to concurrent terms of 30 months' imprisonment on each count. He appealed against conviction

The issues

Whether it was correct to rely upon article 5(1) of Council Regulation (EEC) No 3 626/821 and article 4(1) and (2) of Council Regulation (EC) No 338/97 to draw an inference towards a conviction on an offence of being knowingly concerned in fraudulent evasion of restriction on importation of goods as per 170(2)(b) of the Customs and Excise Management Act 1979, taking into consideration the point of entry was not the UK.

Decision

The question to the question raised above was answered in the affirmative. Henceforth, the appeal was dismissed. The Court, however, considered that the sentence of 30 months imprisonment was too severe and reduced this to 18 months.

The reasoning behind

The Court of Appeal held that Council Regulations (EEC) No 3626/82 and (EC) No 338/97 were "enactments" for the purposes of section 170(2) of the 1979 Act; that the 1979 Act clearly incorporated as restrictions the Council Regulations which restricted entry of certain goods into the EU as a whole without differentiation between member states; that the territorial scope of the 1979 Act turned on the scope of the restrictions in the enactments in question, which took effect under the Act according to their terms rather than being cut down by the Act; and that, accordingly, it was an offence under section 170(2) of the 1979 Act for a person to be knowingly concerned in the fraudulent evasion of the restriction, contained in the Regulations, on the importation of goods into the EU whatever the country of entry into the EU might be.

In reducing the sentence of 30 months' imprisonment to 18, the court noted that an immediate custodial sentence is usually appropriate to mark the gravity of CITES offences but, in this case having regard to the defendant's financial losses (£50,000) and his motives simply to breed the birds, 18 months was the appropriate sentence.

Annex II – Draft E-Mail to ENPE Members

Dear ENPE Member,

I hope this email finds you well.

As a valued member of ENPE, we would like to take this opportunity to share with you an update regarding changes to be made to ENPE's environmental crime database. We hope that these improvements will enhance the user experience significantly and make the database an even more valuable resource.

Firstly, upgrades will be made to the database's search and filter functions, which will allow users to find relevant cases and information more easily and quickly. New features will also be added that will make it easier for users to share and collaborate on cases with other ENPE members and users of the database.

Furthermore, we have launched a new initiative to grow the database by engaging with other EU environmental agencies and research institutions and inviting them to provide relevant case-notes. We believe that this represents an opportunity to expand ENPE's network, explore new avenues of collaboration and increase valuable content within the database.

Finally, we would like to remind users that the success of the database relies heavily upon the contributions of its members. It is crucial that we continue adding new cases to the database so that it can grow and provide a more comprehensive and consistent pattern of relevant practice.

We encourage all users to take the time to upload any new content that they may have to the database, as such contributions will expand the database significantly. In this regard, we have developed and here attach a simple case-note template that users might employ. If you need to register to access the database please see: [User account | ENPE-European Network of Prosecutors for the Environment \(environmentalprosecutors.eu\)](https://environmentalprosecutors.eu)

If you have any questions or concerns about uploading content to the database, please don't hesitate to contact Shaun Robinson at shaun.robinson@environment-agency.gov.uk

Thank you for your continued support.

Best regards,

[Name]

Annex III – Draft E-Mail to Research Organizations

Dear [Research Organization],

I hope this email finds you well.

I write to introduce you to the **European Network of Prosecutors for the Environment (ENPE) database** of environmental criminal case law and related documents. This database is a unique and growing interface platform which aims to collect and consolidate data on environmental crimes and related sentencing across Europe.

As a leading organisation in the field of environmental law and governance, your centre's work is of great interest to the database. We believe that your work can contribute to ENPE's overall mission, which is to support the network of environmental prosecutors and promote a consistent approach to prosecuting environmental crimes across Europe by providing access to relevant criminal case law and related documentation from across all European States.

By sharing its research findings and outputs with the ENPE database, your organisation could enjoy several benefits, including:

- increasing the visibility of your organisation's work among ENPE members;
- opportunities for researchers, particularly those at an early stage in their careers, to increase the impact of their research activities and outputs;
- collaboration and networking opportunities with a range of participating organisations, potentially leading to opportunities to participate in joint projects;
- the opportunity to contribute to the global effort to monitor and prevent criminal environmental harm.

If interested, you could contribute to the ENPE database by identifying cases in the area of environmental crime and creating brief case notes based on the template, which I attach for your convenience. The completed template and a copy of the full judgment should be sent

to **Shaun Robinson**, the responsible contact at ENPE, at shaun.robinson@environment-agency.gov.uk, for uploading to the database.

Please find attached a document that explains in further detail the background, objectives, and scope of the database. You can also visit ENPE's [website](#) for more details. Please note that the website is currently undergoing a complete redesign and a new and improved version will launch in the next few months.

If you have any questions or concerns, please do not hesitate to reach out to us.

Thank you for considering this invitation.

Best regards,

[Name]

Annex IV – List of Research Organizations

	A	B	C	D	E
1	Name	University	Website	Contact	Status
2	Strathclyde Centre for Environmental	Strathclyde University, Glasgow	https://www.strath.ac.uk/research	scelg@strath.ac.uk	Not contacted
3	Centre for Environmental Justice	Cardiff University Law School	https://blogs.cardiff.ac.uk/centre-fj	Dr Caer Smyth SmythC@ca	Not contacted
4	Environmental Law Research Group	University of Eastern Finland	https://sites.uef.fi/cceel/	Prof Niko Soininen niko.soi	Not contacted
5	Environmental Law and Sustainability	UWE Bristol	https://www.uwe.ac.uk/research/c	Prof Jona Razzaque jona.ra	Not contacted
6	Research Centre for European Environ	University of Bremen	https://gnhre.org/universities/rese	verwaltung-jura@uni-brem	Not contacted
7	Global Network for Human Rights and	GNHRE	https://gnhre.org/about-us/	gnhrewebsite@gmail.com	Not contacted
8	Law, Environment and Development C	SAOS London	https://www.soas.ac.uk/about/res	Prof Philippe Cullet p.cullet	Not contacted
9	Environmental Law Research Institute	Goethe University, Frankfurt	https://www.goethe-university-fra	Prof. Dr. Eckard Rehbinder	Not contacted
10	Exeter Centre for Environmental Law	University of Exeter	https://law.exeter.ac.uk/research/	exetercel@exeter.ac.uk	Not contacted
11	Surrey Centre for International and Env	University of Surrey	https://www.surrey.ac.uk/surrey-c	Prof Rosalind Malcolm r.m	Not contacted
12	Stockholm Environmental Law and Po	Stockholm University	https://www.su.se/stockholm-envi	Pro Jonas Ebbesson jonas.e	Not contacted
13	Aberdeen University Centre for Energy	University of Aberdeen	https://www.abdn.ac.uk/law/rese	Dr Thomas Muinzer thoma	Not contacted
14	UCL Centre for Law and Environment	University College London	https://www.ucl.ac.uk/law-environ	Prof Eloise Scottford eloise.	Not contacted
15	The Centre for Environmental and Ener	Ghent University	https://www.ugent.be/re/epir/en/	Prof Dr Geert Vanhoorick g	Not contacted
16	Lauterpacht Centre for International La	University of Cambridge	https://www.lcil.cam.ac.uk/interna	Pro Eyal Benvenisti eb653@	Not contacted
17	Research Center for Environmental La	University of Hamburg	https://www.jura.uni-hamburg.de/	Dr Ivo Appel ivo.appel@jur	Not contacted