

The Contribution of Criminal-Law Means to Saving the Sturgeon from the Danube and Black Sea

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Abstract: The protection of certain species of fauna and flora against overexploitation and rescuing some of them from extinction is mainly the concern of many institutions and organizations especially the NGOs. Among these species currently threatened with extinction include the wild sturgeons, ancient species, since the age of the dinosaurs. Given that Romania and Bulgaria are the only EU countries on whose territory there are populations of sturgeon breeders, in this study we aim rather at drawing an alarm signal in addition on the need of improving the juridical-criminal framework that would ensure the protection and rescue of sturgeons from extinction.

Keywords: wild sturgeon; prohibition; protection; poaching; caviar

1. Introductory Elements

The current major challenges of today such as terrorism, trafficking in weapons, drug trafficking, illegal migration, human trafficking, laundering or embezzlement, are one of the most seductive objectives due to gains the enormous insured gains without excessive risks for criminal organizations. (Voicu, 2002, p. 300)

Such acts may be committed in the border waters, coexisting with other crimes specific to these areas such as those regarding border regime or targeting the Water and the environment regime, the navigation regime, the regime of fisheries and others. (Bocănială, 2009, p. 13)

In this context we find easily treated some specific fisheries issues especially those related to the violation of the basic rules that regards the protection of fish resources, which can damage and even bring prejudices very serious to this area and even to the environment in its entirety.

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An illustrative example in this regard is the situation of fish species that are endangered, as is the case of wild sturgeon, species that exist for 200 million years and currently in danger of extinction due to overexploitation in prior periods and especially their ruthless poaching.

For the natural geographical area of wild sturgeons located in the Eurasian area, the sturgeon fishing is an integral part of local culture and it frequently comes into conflict with fishery prohibition, including such as the one currently in force in Bulgaria and Romania.

The temptation consists in the particular meat of sturgeon species, such as visa, the starlet, the sturgeon, stellate sturgeon and beluga, vulnerable or critically endangered species¹, which are in great demand, especially those species of sturgeon for the famous caviar. Due to their exorbitant price, they bring great gains especially to some transnational networks' dealers specialized in their illegal trade, encouraging and inducing even more frequently poaching the aforementioned sturgeon species.

Romania and Bulgaria are the only EU countries that have populations of wild sturgeon breeding. They are a natural habitat for breeding wild sturgeons, knowing that although these species living in marine environment, they reproduce in the fresh water of the Danube River.

Both authorities, on their own initiative, but mostly due to the alarm signals drawn from a number of nongovernmental organizations at national and international level, who are trying for a few years now to establish and maintain a series of measures, including criminal law measures to protect the fish stock in some protected areas and especially of endangered species, as it is the case of the sturgeon.

One of the largest organizations which aim at preserving nature, World Wide Fund for Nature (WWF), with branches in many countries of the world, including Romania and Bulgaria, has developed several projects including "Protect the sturgeon, the most valuable gift of the Danube" conducted during 2012-2015 in order to address the issue of overfishing, the main direct threat to the survival of the last viable wild sturgeon populations of the Lower Danube.

¹ As they were classified by Order no. 545/715/2016 of 11 April 2016 on the conservation and restoration measures of the sturgeon populations from their natural fishery habitat, Issuer: Ministry of Agriculture and Rural Development.

There were also conducted several programs on sturgeon restocking of natural spreading areas using juveniles obtained in artificial conditions, with no significant results, and for many years there are made efforts to ban sturgeon fishing in most countries of the Black Sea coast.¹

2. Regulations on Fishing the Wild Sturgeon

According to the definition given by special legislation in the area, fishing is the activity of *catching fish based on authorization, places, times and dimensions permitted by the law tools for industrial, scientific or sports' purposes*. To perform this activity there must be fulfilled general conditions, available throughout the country, governed by the law.²

Internationally, the Standing Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora Endangered (CITES) approached sustainably the problem of selling wild animals as being in fact animals bred in captivity starting from the finding that sturgeon are among the most endangered species globally which are victims of such practices. They were found frequent cases where sold caviar sturgeon was supposed to be harvested in captivity, but after testing in the lab, it turned out to originate from regions or species other than those indicated by the CITES label on the bottle³. This means that it is also possible that the product was harvested from sturgeon that has not been bred in captivity, but was actually poached.

¹ Turkey banned sturgeon fishing below 10 kg since 1958, and in 1996 it was completely banned the sturgeon fishing. The prohibition is in force in Ukraine as well since 1996, in Georgia since 1967, in Romania since 2006 and in Bulgaria since 2011. In Russia there is codfish prohibition on fishing in the Sea of Azov since 1985 and since 2005 it is banned fishing for all species of sturgeon including from the Black Sea. In addition, Russia wants to extend this ban also for the Caspian Sea.

² Law no. 192 of 19 April 2001 on fish fund, fishing and aquaculture, republished in the Official Monitor no. 627 of 2 September 2003.

³ Although they are protected under CITES since 1998, poaching and illegal trade in caviar and other sturgeon products continue to threaten the existence of these wild sturgeon. All caviar in international trade must be labeled CITES. The label provides information on the species, its origin (wild species are marked with "W" and bred in captivity – "C"), country of origin, the year in which the caviar was harvested or repackaged, registration code official the company that manufactured / re-packaging (including the country in which it has been repackaged, where the product has been imported and repackaged) and batch the identification number / the authorization number of the CITES export / re-export certificate number.

Given the specific legal provisions in force¹, the recommendations contained in a series of relevant documents at national and international level in the field², and the conclusions of the repeated meetings organized by the National Agency for Fisheries and Aquaculture and the Institute of Biology Bucharest, National Institute of research and Development “Danube Delta”- Tulcea, “Dunarea de Jos” University of Galati and representatives of commercial fishermen organizations on 18 November 2015 and the conclusions of the international reunion on the preservation of sturgeon in the Danube basin held in Vienna on 2 December 2015 on the proposal of the National Agency for Fisheries and Aquaculture and Biodiversity Directorate of the Ministry of Environment, Water and Forests, on April 11, 2016, the order No 545/715 on the measures of restoration and conservation of sturgeon populations in natural fishery habitats.³

The Order in question aims at ensuring the restoration and conservation of sturgeon populations of the species vyza, stor sturgeon, Black Sea sturgeon, sevruga and beluga species vulnerable or critically endangered by measures of temporary prohibition of fishing in natural fishery habitats and the artificial reproduction in order to obtain fry for aquaculture. Article 3 of the mentioned Order also prohibited for a period of 5 years from its publication, commercial fishing of sturgeon species from natural fish habitats in Romania. They are also prohibited on the same period the marketing of products and by-products (meat, caviar and products directly from them, eggs embryos, larvae and pre-developed seedling) obtained from sturgeon caught in natural waters of the Danube and the Black Sea and the use of any tools or equipment for sturgeon fishing, including nets and hooks in fisheries in natural fish habitats in Romania. The Order compels fishermen to free in the natural environment the wild sturgeons captured accidentally, regardless of their condition.

¹ Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture, approved with amendments by Law no. 317 / 2009, as amended and supplemented; the Government Emergency Ordinance no. 57/2007 on protected natural regimes, natural habitats, wild flora and fauna, approved with amendments by Law no. 49/2011, as amended and supplemented.

² Recommendation no. 3425 of 6 July 2015, of the CITES Scientific Authority, namely the National Institute for Research and Development “Delta Danube” - Tulcea, the EU Strategy for the Danube Region, the Framework Directive Water, Habitats Directive, the Convention on the Conservation of European Wildlife and Natural Habitats in Europe and the Convention on migratory species of wild animals.

³ Issuer: Ministry of Agriculture and Rural Development.

3. The Criminal Means to Protect and Save the Sturgeon

Undoubtedly provisions such as those contained in the Order No 545 / 715 on the measures of restoration and conservation of sturgeon populations in natural fish habitats would be deprived of a minimum efficiency if the law does not include sanctions, including criminal penalties for non-compliance.

On our study, we may observe that Order No 545 / 715 April 11, 2016 as it could not include sanctioning provisions of this nature, refers to the special law in the field, the Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture, approved with amendments by Law no. 317 / 2009, as amended and supplemented, and the Government Emergency Ordinance no. 57/2007 on protected natural regimes, natural habitats, wild flora and wild fauna, approved with amendments by Law no. 49/2011, as amended and supplemented.

Analyzing the two legislative acts specified by the order, we find that the first of them is fined by 6,000 lei to 10,000 lei and the prohibition on fishing for a period between 1 and 3 years, unauthorized fishing of sturgeon or possession, transport, marketing sturgeons, sturgeon products and by-products without legal documents or legal support¹, besides a multitude of other criminal acts that target the general fishing.

We see so basically, although we would have expected the ban on sturgeon fishing in order noble savages told to protect and save them, was simply prohibited commercial fishing of these species. From the normative interpretation of results that further, sturgeon can be caught for scientific, therefore it is necessary to obtain a special authorization issued by the National Agency for Fisheries and Aquaculture.

4. Conclusions and Proposals *de lege ferenda*

Legal fishing, commercially, of the sturgeon was stopped in Romania since 2006 during which, in addition to government agencies and national and international non-governmental institutions, including fishermen were engaged in the monitoring activity of their evolution.

¹ Art. 64, letter c) and d) of the Emergency Government Ordinance no. 23/2008 on fisheries and aquaculture, approved with amendments by Law no. 317/2009, as amended and supplemented.

Despite attempts of artificial restocking with sturgeon, this ancient species, since the age of the dinosaurs, is still endangered.

A necessary but not sufficient measure to protect sturgeons would be continuing prohibition for a longer period of time, while ensuring, in terms of environmental protection, including with regard to the regularization of the Danube River course, the necessary conditions to minimize adverse effects on aquatic ecosystems.

At the same time, it is required the creation of mechanisms by which fishermen to acknowledge the need to protect and rescue the population of wild sturgeon and to be supported to get revenues from alternative sources in order to ensure a standard of living that is not prone to poaching.

As the Order No 545/715 of April 11, 2016 still leaves the possibility of fishing sturgeon for scientific purposes, it requires a more strict regulation of the conditions of special licensing in this purpose, in order to eliminate or even reduce cases of the so-called "legal poaching" under the cover of these special permits.

Last but not least, we appreciate that it requires an amendment of Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture, approved with amendments by Law no. 317/2009, as amended and supplemented, meaning even increasing penalties for the offenses relating to sturgeon, given the pressing need of their protection and rescue.

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