



**Legal Recourse for Illegal Wildlife Trade:
An Analysis of Georgia's Liability
Legislation**

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Acknowledgments



This report was produced with generous support from the Illegal Wildlife Trade Challenge Fund of the Department for Environment, Food & Rural Affairs of the British Government.

Cover photo/s: Gareth Goldthorpe/FFI

Recommended Citation

Rodriguez, M., Dzimistarishvili, U., and Phelps, J. (2022). Legal Recourse for Illegal Wildlife Trade: An Analysis of Georgia's Liability Legislation. Report prepared for Fauna & Flora International, Tbilisi, Georgia.

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1. Conservation Litigation as a Response to IWT

Illegal Wildlife Trade (IWT) is a leading driver of biodiversity loss (Young et al., 2016). Notably, it yields a number of cascading impacts along the trade chain, affecting not only individual plants, fungi and animals, but also the survivorship of populations and entire species; impacts on ecosystem functions and services, and disruption to the livelihoods of communities who have use natural resources for their subsistence (Ash et al., 2017; Phelps et al. 2021). IWT can also impact wellbeing in other ways, such as impacts on spiritual, medicinal and cultural values that can be impossible to compensate for (Alves, 2012). Moreover, IWT can increase costs for government agencies and NGOs that often bear the effects of IWT, including rehabilitation centres responsible for wildlife confiscated from IWT (Freischlad, 2019).

The illegal and unsustainable trade of species in the Caucasus has emerged as a key threat to the region's biodiversity, including in Georgia (Pantel and Arabuli, 2014). Fauna and Flora International (FFI) have identified several specific trades of particular concern, including:

- (a) the taking and trading of birds of prey, including the Eurasian sparrowhawk (*Accipiter nisus*), Peregrine falcon (*Falco peregrinus*) and Saker falcon (*Falco cherrug*);
- (b) poaching and trade of sturgeon (*Acipenser spp.*, and *Huso huso*);
- (c) the hunting and trading of mammal products of brown bear (*Ursus arctos*), wolf (*Canis lupus*) and tur (*Capra caucasica*, *Capra cylindricornis*);
- (d) the collection of native plants, notably snowdrops (*Galanthus woronowii*) and cyclamen (*Cyclamen coum*), and;
- (e) the pet trade in amphibians, reptiles and exotic birds such as Spur-thighed tortoise (*Testudo graeca*), Caucasian agama (*Laudakia caucasia*), Caucasian salamander (*Mertensiella caucasica*) and African Grey Parrot (*Psittacus erithacus*).

Given these broad impacts, there is growing support to strengthen legal-regulatory and enforcement-based responses to IWT. These are heavily focused on the criminalisation of IWT and strengthening penalties to obtain a deterrent effect, typically focused on sanctions involving fines, and imprisonment. Conservation litigation approaches, based in environmental liability laws, may provide an important, *additional* legal response to some cases of high-level IWT. Used alongside traditional criminal and administrative laws, liability litigation can help to further deter this type of conduct in ways that also focus on remedying the harms caused by IWT (Phelps et al. 2021a). Environmental liability suits hold the potential to obtain legal remedies with the goal of making the injured parties 'whole', potentially including species rehabilitation, public apologies, habitat conservation and investments into education (Phelps et al. 2021).

Related liability legislation exists in many different countries (Jones et al. 2015), and related lawsuits have been sought in a number of different contexts, such as marine oil pollution, industrial accidents and even climate change, but this path remains a novel legal response to IWT (Phelps et al. 2021a,b). Importantly, the viability of such conservation litigation depends heavily on the nuances of domestic legislation. This report analyses the suitability and operability of Georgian laws to develop conservation litigation in IWT cases. Notably, Georgia has a new Environmental Liability Law (2021), which creates new opportunities for litigation, but also highlights the lack of existing experience with developing and adjudicating these types of cases. The resource is intended for lawyers and non-lawyers alike, including prosecutors, conservation NGOs and judges.

2. Environmental Liability in Georgia

The environmental liability regime in Georgia is ruled by two co-existing pieces of legislation:

1. Government Decree 54/2014 on “Monetary Compensation for Environmental Damage” (the 2014 Monetary Compensation Decree). This piece of legislation allows for economic compensation in cases of harm⁵ to biodiversity, including plants, timber and fish, based on standard values and formulas listed in the Annexes to the Regulation. A new Decree on Monetary Compensation for Environmental Damage (the 2022 Decree) is currently being drafted, with an expectation that it will be approved before 1st July 2022, after which the 2014 Decree will cease to have effect⁶.
2. The Environmental Liability Law which was approved in March 2021. This piece of legislation is based on the “polluter pays” principle and applies to scenarios where significant damage (defined below) is caused to the environment. In these cases, the responsible actor is requested to restore the environment exactly as it was before the harm occurred (also called baseline condition), including interim losses. This Law will be in force in its totality as from July 1st 2022.

In cases of harm inflicted to private property (for instance collection of wild plants in privately owned lands), the owners may claim compensation for the damage caused. This is, however, beyond the scope of the Environmental Liability Law and this analysis, and it will not be dealt in detail in this report.

In the case that restoration measures are technically impossible, then monetary compensation can be claimed, following the processes defined in the 2014 or 2022 Decree. The sums paid as a result of monetary compensation will go to a specially created fund, which will finance environmental restoration.

2.1. Legal recognition for the harm caused by IWT

The application of these co-existing rules to IWT depends on a number of factors. In order to assess what rules apply and how this could be done, we identify key elements to take into consideration.

2.1.1 What is environmental harm caused by IWT?

Identifying whether liability rules apply to a given case, first requires an analysis into the type of harm caused. In Georgia, this determination is made by the Environmental Supervision Department, under the Ministry of Environmental Protection and Agriculture. The current legal regime differentiates between two types of environmental harm that determine whether the new liability law can apply to an IWT case:

a) Environmental damage: Understood as adverse effects on the environment, this is a broad definition that includes all types of environmental categories, including “biodiversity”, with no limitations in terms of type or scale of harm. As such, this definition covers harm caused to any species, protected or unprotected, and whether harmed by illegal wildlife trade or any other activity.

b) Significant damage: This is a narrower concept, and harm must fulfil certain criteria/thresholds in order to be considered “significant”. These criteria are set out in Annex

⁵ In this document ‘harm’ and ‘damage’ will be used as synonyms. In other jurisdictions, however (e.g., USA), harm is used to describe the injury that occurs, and damage (or damage claim) is used to describe the remedies claimed by the plaintiff.

⁶ It is noted that as this document went to print the Decree on Monetary Compensation for Environmental Damage was ratified.

No 1 to the Law. In relation to harm to biodiversity, it will be considered “significant” if it is caused to:

- At least one species listed on the Red List of Georgia’s Endangered Species (Decree N. 190 of February 20th, 2014) as: Endangered (EN), Critically Endangered (CR) or Regionally Extinct (RE). This list is established by the Endangered Species Commission of the Georgian Academy of Sciences and updated every 10 years. It includes endangered native and migratory species in the territory of the country. The criteria to define the conservation status should be consistent with the conservation list categories approved by the International Union for Nature Conservation (IUCN) (Art 16 Georgia Law on Red List and Red Book).
- Species protected under the Bern Convention as long as two conditions are met: they are also listed in the Red List of Georgia (with any conservation status, not limited to those mentioned above), and the harm needs to pose a risk of destruction of their national or local populations.⁷

How to decide which of the coexisting liability laws applies in a given case?

Which law applies depends on the definition of harm/damage and the species affected: If the harmed species falls within the definition of “significant damage”, then the 2021 Environmental Liability Law applies. If species are not within that scope, the 2014 or 2022 Monetary Compensation Decrees applies, depending on the moment when the act was committed. Table 1 describes the regime under which different species in Georgia could fall, together with their legal and conservation status.

⁷ The definition further applies to: 1) a state reserve, a national park, a natural monument, or a managed reserve that was destroyed in whole or in part (more than 0.01% of the total area), or the designation and/or purpose of its establishment was lost; 2) An area of the Emerald Network damaged in such a way that the designation and/or purpose of its establishment was lost; 3) A Ramsar Site was damaged in such a way that the designation and/or purpose of its establishment was lost; 4) More than 0.5 hectares of forest were damaged/destroyed in such a way that the forest lost its designated function and it is impossible to restore it in part or in whole.



Table 1. Legal protection of species threatened by IWT in Georgia, and application of liability regimes in Georgia. Harm to species under the scope of the new Environmental Liability Law are highlighted in light grey. Those under the Monetary Compensation Decrees are in white, alongside with the monetary valuation of corresponding compensation according to the 2014 Decree (IWT priority species identified from Pantel and Arabuli, 2014).

Common name	Scientific Name	Georgia Red List 2014	BERN	CITES	Type of harm	Applicable regime	Monetary value (GEL) (2014 Decree)
Brown bear	<i>Ursus arctos</i>	EN	App. II	App. II	Significant	Env. Liability Law	10000x5
Wolf	<i>Canis lupus</i>	-	App. II	App. II	Environmental	Monetary Compensation Decree	300
Western Tur	<i>Capra caucasica</i>	EN		App. II	Significant	Env. Liability Law	13000x5
Eastern Tur	<i>Capra cylindricornis</i>	VU	-	-	Environmental	Monetary Compensation Resolution	13000x5
Wild Goat	<i>Capra aegagrus</i>	CR	App. II		Significant	Env. Liability Law	10000x5
Beluga	<i>Huso huso</i>	EN	App. III	App. II	Significant	Env. Liability Law	155x5
Russian Sturgeon	<i>Acipenser gueldenstaedti</i>	EN		App. II	Significant	Env. Liability Law	155x5
Ship Sturgeon	<i>Acipenser nudiiventris</i>	EN		App. II	Significant	Env. Liability Law	155x5
Persian Sturgeon	<i>Acipenser persicus</i>	EN	-	App. II	Significant	Env. Liability Law	- x5
Stellate Sturgeon	<i>Acipenser stellatus</i>	EN	App. III	App. II	Significant	Env. Liability Law	155x5
Atlantic Sturgeon	<i>Acipenser sturio</i>	CR	App. II	App. I	Significant	Env. Liability Law	155x5
Peregrine falcon	<i>Falco peregrinus</i>	-	App. II	App. II	Environmental	Monetary Compensation Decree	500
Eurasian sparrowhawk	<i>Accipiter nisus</i>	-	-	App. II	Environmental	Monetary Compensation Decree	50
Saker falcon	<i>Falco cherrug</i>	CR	App. II	App. II	Significant	Env. Liability Law	500x5
Gyrfalcon	<i>Falco rusticolus</i>	-	App. II	App. II	Environmental	Monetary Compensation Decree	-

Green snowdrop	<i>Galanthus woronowii</i>	-	-	App. II	Environmental	Monetary Compensation Decree	-
Cyclamen	<i>Cyclamen colchicum</i>	-	-	App. II	Environmental	Monetary Compensation Decree	-
Spur-thighed Tortoise	<i>Testudo graeca</i>	VU	App. I and II	App. II	Environmental	Monetary Compensation Decree	100x5
Caucasian Rock Agama	<i>Paralaudakia caucasia</i>	-	-	-	Environmental	Monetary Compensation Decree	20
Caucasian Salamander	<i>Mertensiella caucasica</i>	VU	-	-	Environmental	Monetary Compensation Decree	100x5
Grey Parrot	<i>Psittacus erithacus</i>	-	-	App. I	Environmental	Monetary Compensation Decree	-

2.1.2 Scope of harm

The definition of “significant damage” further requires that the affected specimens be destroyed (e.g., killed), or damaged in such a way that poses a risk of their “destruction”. Considering the three levels of conservation classification included in the definition, one can interpret that the taking of even one individual of a species that is listed as EN, CR or RE poses a genuine risk of destruction. On the other hand, the definition of “environmental damage” is wider, and does not specify the type of harm.

The legislation does not define or limit the specific types of impacts/harms that can be recognised as a result of “environmental harm” or “significant damage” caused by actions such as IWT. The literature (Phelps et al. 2021a), however, identifies potential types of harms that could be identified in an IWT case, including:

- Harm to the total environment, including: harm to individual plants or animals affected in this case, harm to the overall survival of the harmed species, and harm to public ecosystem goods and services.
- Harm to the State, including: economic harm due to loss of revenues for hunting/trading licences but also other types such as harm to touristic services, or to the environmental protection mission of authorities and even harm to their reputation.
- Harm to private economic interests, including: the expenses of rescue centres for taking care and rehabilitating live specimens.
- Intangible harm, including: harm to cultural, religious, educational, intrinsic, existence and bequest values.

What happens if there was no intention to cause the harm?

In some cases, IWT offenders may cause harm unintentionally. For example, a hunter may shoot a bird by mistake, or a market seller may not know that they are selling wildlife items illegally. May liability apply in these cases? And how? Again, it depends on the type of species concerned.

If species fall within the scope of “significant damage”, and if harm resulted from participation into “particularly hazardous activities” listed in Annex 2 of the Environmental Liability Law (e.g., transportation of toxic waste), then the actors can be held responsible, regardless of intention, and it is not necessary to prove that they were at fault. This is called “strict environmental liability”. In relation to IWT, Annex 2 of the Law lists “Activities envisaged by a special licence for the hunting industry” as particularly hazardous. This means that, if harm is produced in the course of a hunting activity regulated by special licences, then strict liability would apply and authorities would not need to demonstrate intention or knowledge. If, on the contrary, harm is caused by a different activity, authorities would have to prove that the actor was at fault. In our examples above, if the hunter shoots down a bird for which hunting requires a special licence, he/she would have to face liability, irrespectively of whether it was an accident or not. For the second example, the activity of selling wildlife products in the market may not be included in the definition of ‘hunting industry’ but the new liability still applies. It is possible that authorities need to demonstrate ‘fault’. In those cases, it would be useful to verify their trading licences to verify that all necessary steps were taken to guarantee the legality of the product sold.

In cases of environmental damage when the Monetary Compensation Decree applies, fault and causality are required. This means that the author must have acted negligent or intentionally, and that the harm is a direct consequence of his/her actions. An illegal action such as illegal hunting or fishing would fulfil the fault criteria. This would then facilitate the position of authorities, which would only have to demonstrate that the actions undertaken caused the alleged harm.

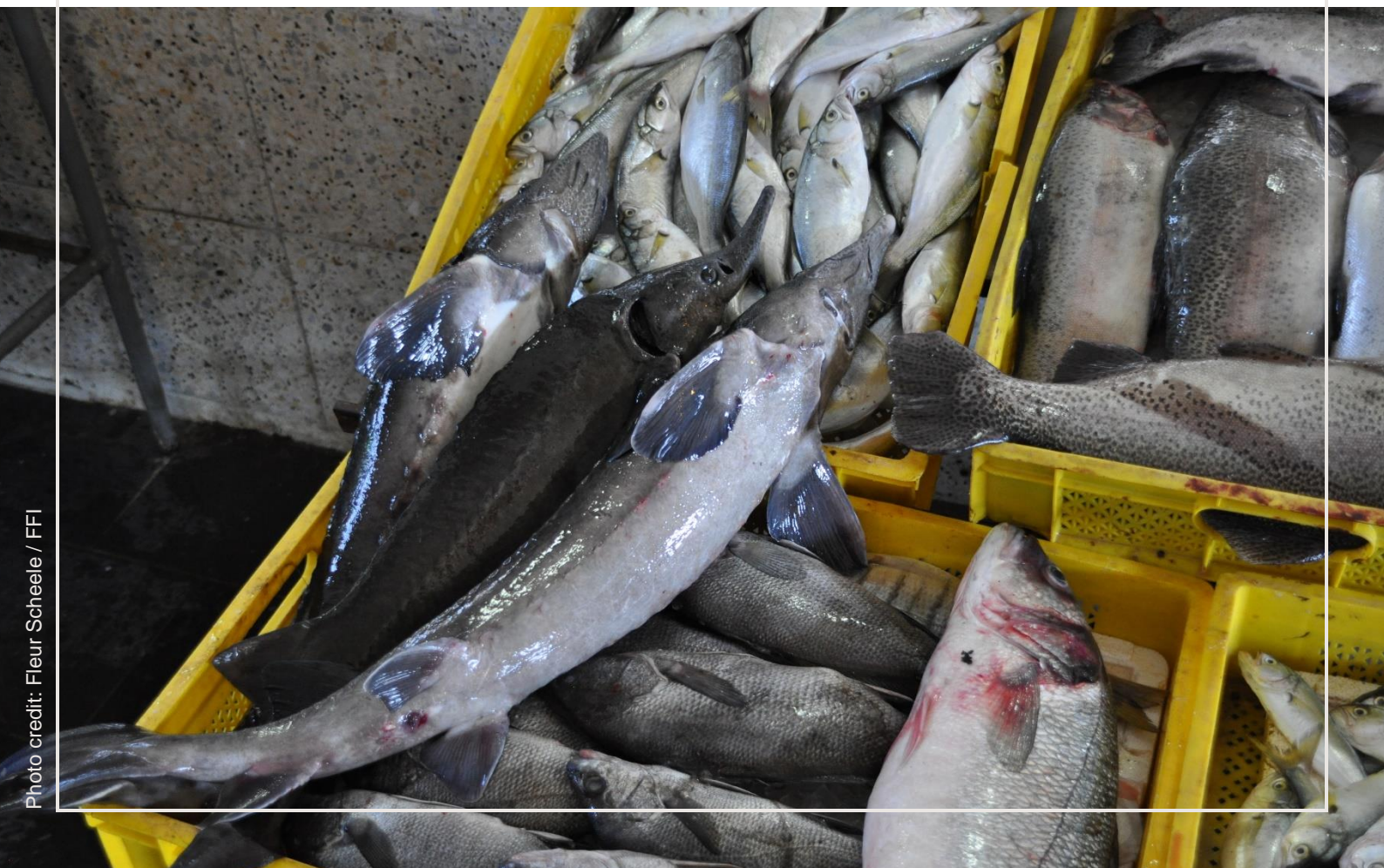




Photo credit: Gareth Goldthorpe / FFI

2.1.3 Exceptions to the new Environmental Liability Law

The new liability regime establishes a number of exceptions, cases in which its provisions would not apply. In terms of IWT, the following exceptions might be relevant in a given case:

- The law does not apply in cases of force majeure, defined as a natural disaster (earthquake, landslide, flood or any other similar event) or a crisis situation. Georgian laws have no specific provision on damage to wildlife caused by self-defence. However, damage inflicted in self-defence in general is foreseen as an exception in the general criminal and civil codes, which states that no damages may be claimed if harm was caused by self-defence. It is difficult to ascertain if this is also applicable to damage to wildlife, especially if damage is significant.
- Cases where it is impossible to identify an operator whose illegal actions have caused environmental damage or significant environmental damage (unless there are grounds for imposing strict environmental liability on an operator). This could be relevant in cases of hunting of birds of prey, when significant harm has occurred to a given species but it is impossible to determine an individual responsible.
- Environmental damage and significant environmental damage caused by actions carried out before the entry into force of the new Law (i.e. 1st July 2022).
- Damage inflicted on a private owner that does not exclude the private owner's right to claim compensation for damage from an operator responsible for the damage as provided for by the legislation of Georgia. This could apply in cases where wild plant collection has been done in private lands. In these cases, the owner has the possibility to request civil remedies from a civil court.
- Environmental damage and significant environmental damage caused by actions carried out by a natural person (except for an individual entrepreneur provided for by the Law of Georgia on Entrepreneurs).

Can individuals or members of organised criminal networks be held liable for IWT activities under the new liability law?

The new liability law does not apply to natural persons, which suggests that individuals with no legal personality (e.g., harvesters, market traders, sports falconers, pet buyers) cannot be held legally liable for involvement in IWT. However, if those individuals operated as individual entrepreneurs or as part of an organisation—even an informal / unregistered one – then liability can apply. In such a case, the environmental authorities would need to work with the financial enforcement authorities in order to demonstrate that the person/s and/or criminal organisations has/d been operating de facto as operators or without being registered as an individual entrepreneur. Once this has been legally established, the environmental authorities could consider the inapplicability of this exception. If, on the contrary, the exception is applied to a given case, then the Monetary Compensation Decree could still be used to obtain monetary compensation for the harm caused.

2.2 Remedies in IWT liability cases

Once the type of harm has been identified, developing a case requires defining applicable remedies. As we have seen above, for **environmental damage** the only possible resource is to request monetary compensation. The 2014 Decree lists in Annex 11 the standard values applicable to 440 species. Table 1 refers to the values applicable to IWT species. It is uncertain what values would apply to non-listed species, if any. It is expected that these values will be modified in the new Monetary Compensation Decree.

Remedies in the new Environmental Liability Law are broader:

For **significant harm** the new Environmental Liability Law requires that the actor undertake a number of steps to remediate it. The liable person should also submit a plan to the National Environmental Agency explaining how they will remedy the harm.

There are three types of remedies:

- a. Restoration of the environment to its original condition (existing before damage). This is the priority solution. If this would not be possible, then
- b. Restoration of the environment to the state close to its original condition (existing before damage).
- c. Implementation of compensatory/adequate remedial measures at a site adjacent to the damaged area or at an alternative site. Only when a) and b) are not possible. The new law does not define these or specify how remedies should be determined, and it leaves this to implementing legislation, which is currently being discussed.

Despite the lack of current guidance for forming remedies, we believe that this plan may involve actions to increase wildlife populations in the wild. In this sense, we share here some considerations coming from the literature (Phelps et al. 2021c):

In some cases, it may be possible to increase the population by reintroducing a live individual into its wild population. However, reintroduction is unusual for many species due to lack of expertise and concerns about habituation to humans, disease, and inability to survive in the wild. In other cases, habitat restoration (e.g. following a forest fire) may help increase species populations, but additional actions are also likely necessary, such as providing corridors to increase access, reintroducing species, supplemental planting or habitat creation to encourage target species. As such,

remedies are likely to involve other actions that can help to increase wild populations to their levels as if the harm had never occurred. If one individual is effectively removed from the wild population, then the wild population must be restored by one individual. That increase in survival provides redressability for the individual(s) that were lost as a result of the initial harmful act. These actions may be providing protection to additional habitats, restoring habitats or better patrolling and monitoring to endangered populations. If this is not possible, liable person has to submit to the Agency justification and the project to restore damaged site to close to baseline conditions. If this is also not possible, then it has to submit the relevant justification to the Agency, which makes final decision.

If the Environmental Supervision Department decides that none of the above actions is feasible to repair the significant damage, it would request monetary compensation for significant damage. The amount of compensation shall be determined by the 2022 Decree on Monetary Compensation. In the meantime, the 2014 Monetary Compensation Decree is applicable.

2.3 Procedures for requesting environmental liability

The new Environmental Liability law is principally exercised by the government, and establishes an administrative procedure, whereby public authorities are in charge of determining the harm caused and of imposing liability to actors. The Environmental Supervision Department and National Environmental Agency, under the Ministry of Environmental Protection and Agriculture are the responsible authorities for this. This same principle applies for the Monetary Compensation Decree. The sections below only describe the rules present in the new Liability Law.

2.3.1 Steps in a liability suit

The first step is for the person liable to contact authorities and inform them of the harm. While authorities assess the situation, the defendant is responsible for taking the necessary measures to prevent and mitigate the damage. The Department assesses the link between the actions and the damage and quantifies it, with the help of relevant experts if needed. It has 120 days to determine whether the harm is “significant damage” after the harm has been identified. At this point in the procedure, actors may submit proof that they fall within one of the above mentioned exceptions. Afterwards, authorities will decide on the type of liability. If there are several operators responsible for causing significant damage, they shall be jointly and severally liable.

Given the characteristics of IWT in Georgia, it seems very unlikely that actors involved would inform authorities willingly. It is more likely that authorities discover the facts during monitoring, patrolling or investigative activities. In these cases, and in the absence of the implementing legislation, it seems that if information is received by the authorities within a given time lapse, authorities are entitled to request information from the responsible person before they take a decision on the liability and remedies to apply.

2.3.2 Deadlines to define harm and remedies

The regime does not specify the time limit to bring a damage claim. However, the general administrative code sets a time limit for administrative violations, which is 6 months from the fact. The complete procedure will be stipulated in a future implementing legislation currently being drafted.

2.3.3 How may NGOs intervene in the procedure?

Although the bringing of liability claims is the sole responsibility of the government in Georgia, civil society and citizens may participate in the procedure. The law identifies several key pathways for their involvement.

They may share information with authorities. In case of IWT, environmental NGOs may have valuable information about the activities of a given hunter/trader that may be essential to demonstrate the link between the activity and the harm, their negligence and also help quantify the damage.

Organisations that have suffered an economic prejudice due to the illegal act may also submit their claims for the authorities to consider them. This could apply for instance to animal shelters or rescue centres that host and take care of specimens seized. Alternatively, they could also bring their case to court if they consider that there has been a damage to their private property. These claims are beyond the scope of the environmental liability discussed in this paper.

Citizens or environmental NGOs that are directly affected by the harm are eligible to submit their claims to the courts, if they disagree with the decisions taken by the authorities. The claim can be applied to the first instance, then it can be appealed at second instance – Appeal Court and finally, at supreme court of Georgia.



3. Final Conclusions

Up until now, biodiversity harm caused by IWT could only be repaired using standard monetary values established in the 2014 Monetary Compensation Decree. As from 1st July 2022, when Georgia's new Environmental Liability Law enters into force, those responsible for IWT and the cascading harms it causes can be held legally responsible for providing remedies for those harms. This introduces an important additional tool for addressing IWT—beyond traditional criminal procedures focused on fines and imprisonment, and beyond administrative sanctions focused on monetary compensation. This means that IWT actors can also be held responsible for meaningful remedies, that help to heal the environment, can create profound deterrent effects, and broad social messaging. Learning to use the new Law will surely present challenges for practitioners across the process, but this baseline analysis provides insights into key issues.

Opportunities:

- Requests for remedies for harm caused to species falling within the definition of “significant harm” such as brown bears, West Caucasian tur (*Capra caucasica*), sturgeons, wild goats and Saker falcon will be possible as from July 1st 2022. This possibility opens a new legal pathway for authorities and affected persons and organisations to finally restore environmental harm, not only to the specimens concerned, but also broader types of harm.
- Compensation paid under the new Liability Law and the new Monetary Compensation Decree will be deposited in an Environmental Fund. Although funds may not go directly to repair the specific harm they were paid for, they will be used to fund environmental restoration.
- The Department will acquire new competences beyond their intervention in criminal procedures, often difficult and long. Especially in cases of strict liability, they will be able to intervene quickly before harm is permanent.
- Expert and public participation in the administrative procedure will provide authorities the knowledge to form a solid definition of the harm caused and better form a list of remedies required.

Challenges:

- The differentiation between environmental and significant damage excludes a number of IWT species from the scope of the law: Wolf, Eastern Tur, Peregrine Falcon, Eurasian Falcon, Gyrfalcon, Snowdrops, Cyclamen, Spur-thighed Tortoise, Caucasian Rock Agama, Caucasian Salamander and African Grey Parrot. In cases of harm caused to these species, the only legal recourse in Georgia is to request monetary compensation as established in the Monetary Compensation Decree.
- Remediation to any non-native and non-migratory species are excluded from both coexisting regimes, as the lists of protected species in both pieces of legislation only contain native and migratory species. Considering that the trade in live exotic birds, amphibians and reptiles is important in Georgia, remedies such as paying for caring or repatriating specimens to their origin country could not be claimed to the responsible person.
- Operationalising these types of cases likely requires types of financial data that may not traditionally be the focus of the Ministry of Environmental Protection and Agriculture, and is likely to require increased cooperation with other agencies, notably Financial Intelligence Unit. For example, establishing that individuals involved in IWT are often not operating as “natural persons” but rather as “legal persons”, whether as entrepreneurs or organisations will require access to financial data. Equally, determining whether a potential defendant is asset-rich, and thus able to pay certain remedies, require access to financial information.
- Increasing comfort of practitioners with using liability law and operationalizing remedies, rather than criminal approaches to IWT.

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