



# **Annex III: General legal protocol for administrative action and liaison with criminal proceedings deriving from the use of poisoned bait in the countryside**

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The present document has been drawn up under the *Life* + *VENENO* (LIFE08 NAT/E/000062) by Pablo Ayerza, lawyer specializing in crimes by illegal use of poison and coordinated by SEO/BirdLife with collaboration of all the key stakeholders in the fight against poison in Spain.

This protocol is the Annex III of the **Action Plan to eradicate the illegal use of poison in the countryside**

## 1. PRELIMINARY CONSIDERATIONS

Given the very nature of this protocol, generic as it is and designed for use by various regional authorities (*Comunidades Autónomas*), express referrals can be made only to national legislation. The provisions then have to be brought into line with the legislative and organisational idiosyncrasies of each particular region, a task that should not prove too difficult for any legal expert.

This protocol therefore sets out to establish general guidelines for obtaining the most effective and immediate administrative response possible by means of remedial measures, injunctions and restraining orders and sanctioning proceedings, and also the coordination and liaison of such action with criminal proceedings.

Some *Comunidades Autónomas* have legislated within their own body of law to overcome any overlap and redundancy between criminal and administrative proceedings in terms of the planting and use of poisoned bait (liability), doing so by laying down specific surveillance duties, responsibility for finding specimens of poisoned fauna, obligation of reporting the offence, compensation arrangements, etc. The regional authorities have thereby managed to increase their leeway for action, reducing their dependence on progress made in criminal proceedings and thereby winning themselves greater autonomy and decision-making capacity. They have also managed to raise to a general principle the need for tenure holders of any countryside activities or operations to become guarantors of biodiversity conservation, together with the holders of rights in rem over the physical environment and any professionals intervening in these processes.

At the end of the day it is a question of achieving joint and unique enforcement of the law in its administrative and criminal facets, obviating the possibility of using criminal judicial proceedings as a pretext for avoiding the much quicker, less unwieldy and less time-consuming administrative option.

In any case the Protocol works from the following premises:

1. The need of working with a wider-ranging regional plan against poison with a global outlook and therefore taking in the rest of the aspects involved in the illegal use of poison.

Nonetheless, this protocol also aims to stand in its own right so that it may be enforced singly, at least in the first moments, given the special features of the matter in hand.



2. The work of the regional plan coordinator, with his or her provincial coordinators, is crucial in terms of knitting together the whole effort, serving as benchmark reference and ensuring proper coordination and liaison of resources and actions and also making sure that all information generated is kept bang up to date.

3. Although this is a legal protocol, it is crucial for there to be decided support from and liaison with the experts dealing with hunting, the countryside and/or biodiversity, whose reports are essential in most of the activities described below as justification for the proposals made.

4. It should be borne in mind here that the provisions and content of this protocol will have to be revised in line with any advances made by the various law-enforcement forces in terms of their work of preliminary investigation, technical matters and other rightful tasks of criminal investigation officers and also the corporate initiative in the fight against the use of poison. Without any doubt independence in their working methods will be one of the keys to success.

Indeed, if one thing has been proven by past experience, it is that painstaking investigation, monitoring and information-compiling arrangements, whether before, simultaneous with or after the offence but in any case continuous in time and with specific personnel, all favour presentation in court of direct proof against defendants, making it practically impossible from then on to avoid accusation if guilty. Any appearance of poison should therefore be considered not only as a one-off case but also as a springboard for the ongoing development of information-handling and investigation techniques that will no doubt turn out to be fruitful in the future.

## **2. PRIOR ACTION BEFORE INITIATING THE ADMINISTRATIVE SANCTIONING PROCEEDINGS**

### **2.1 RECEPTION OF THE REPORTING OF THE ALLEGED OFFENCE BY THE RESPONSIBLE PROVINCIAL SERVICES**

Reception of the reporting of the alleged offence by the responsible provincial services could proceed from:

#### **a) Voluntary reporting of the alleged offence by any citizen, association or professional other than a law-enforcement official**

In this case there should be immediate vetting of the facts of the case by a law enforcement official. Where applicable, the official reporting of the alleged offence should then be drawn up in due accordance with the procedural protocol for law enforcement officials in charge of collecting presumably poisoned fauna or bait and the preliminary investigation. This should always be done in such a way as to guarantee the inviolability of the samples collected, maintenance of the custody chain and the possibility of carrying out second expert appraisals, with referral to authorised official centres.



This work can be carried out both by environment officers and/or Seprona, paying special heed to the due coordination and liaison between forces to ensure economy of means, avoid overlaps and ensure greater efficiency.

Notwithstanding the above, immediate police intervention will be called for in the following cases:

a) When the perpetrator of the offence has been caught red handed, in which case it is legally in order to arrest him/her take his/her statement as accused party with all concomitant formalities. It should be pointed out here that the first declaration in any police investigation procedure is usually of great value as evidence, since the alleged guilty party has not yet had time to fabricate an alibi, resort to more comprehensive advice or is simply overwhelmed by the sheer weight of the evidence against him/her.

b) There is evidence initially pointing clearly at a specific or identifiable perpetrator. For the same reasons as pointed out above.

c) When the events as occurred reasonably point to the possible existence of any type of organisation or network dealing in the distribution, sale or illegal use of the substances normally employed to make poisoned bait (criminal network or organisation). This is especially important when the possible territorial scope exceeds the remit of the environment officers or takes in several *Comunidades Autónomas*.

d) When the environment officers need police intervention in the interests of their personal safety or resistance is put up by the subjects under investigation.

e) When it is reasonable and procedurally necessary to obtain search warrants or any other clearly police investigative arrangement such as the obtaining of fingerprints, DNA or other vestigial evidence which exceeds the environment officers' resources or remit.

Barring any specific collaboration and coordination arrangements that might be established after the coming into force of this protocol, especially taking into account the internal modus operandi of the corps of environment officers to safeguard their independence of action, it will be the provincial coordinator who determines the need or advisability of proceeding jointly with Seprona or of calling in the police force through their higher commands, except in cases of urgency that impede same or for any of the aforementioned reasons.

**b) By communication of actions carried out by the Nature Protection Service (*Servicio de Protección de la Naturaleza*: Seprona) of the *Guardia Civil* or the regional police force of equal ranking**

A sine qua non here is to remind Seprona periodically, through the regional coordinator of the action plan, of the vital importance of notifying the corresponding provincial environmental services and their provincial coordinator of all actions and interventions it may carry out pertaining to events involving evidence of the illegal use of poison. The overriding aim here is



to prevent loopholes of impunity due to lack of coordination between authorities and consequent lack of monitoring or the due administrative or judicial response.

**c) By reporting of the alleged offence drawn up by the environment officers.**

This shall be immediately communicated to Seprona by the provincial coordinator for the same purposes of administrative coordination and liaison with the police forces.

In any case the actions of monitoring, investigation, compiling information or opening and following the lines of investigation, prior to the official taking up of the case by judicial or administrative action, should always remain, at the due discretion of their authors, subject to the necessary secrecy and reserve. It is, however, possible to share said information with the rest of the authorities with remits on the matter in hand, in the interests of bringing the investigation to a complete and successful completion.

**2.2 SENDING THE REPORTING OF THE ALLEGED OFFENCE TO THE PROVINCIAL COORDINATOR AND ANALYSIS OF THE SAMPLES**

Once the reporting of the alleged offence by the environment officers or the official reports drawn up by Seprona have been received in the provincial services, they will be instantly handed over to the provincial coordinator.

The provincial coordinator shall send on these reports to the legal section (*Sección Jurídica*) and ensure the sending on also of any evidence in the case (bait, presumably poisoned animals and other effects) in due form to the official centre in charge of carrying out the necropsies and preparing samples, complying with the protocol drawn up for that purpose. Remaining evidence and vestiges that do not have to be sent to other units, only kept, will be duly kept under secure conditions, properly sealed and identified until such time as a decision is taken about them during the proceedings.

Said official centre will see to the necropsies and forensic reports, analyses and sending out the corresponding expert appraisals. If the reports it draws up on the carcasses of fauna or domestic animals are compatible with cases of poisoning, an analysis will then be made of the collected samples by the toxicology laboratory for exact determination thereof, always using the necropsy report as a guide to the probable toxins involved as compatible with the symptoms detected. This necropsy report will be immediately communicated to the provincial coordinator.

The provincial coordinator will inform the regional coordinator, in the form laid down by the latter, of the arrival of the reporting of the alleged offence and the subsequent developments thereof. He or she will also communicate same to Seprona or nature protection officers. Unless other collaboration arrangements have been established, this communication will be made to the head of the team in each province in charge of specific tasks related to the prosecution of the use of poisoned bait or whoever has the territorial remit therefor, depending on who made the initial dispatch, to ensure due coordination of all actions.



We, for our part, consider it to be very recommendable for the post of provincial coordinator to be filled by an environment officer with specific training in the matter, especially if he or she also assumes specific remits in relation to the use of poison.

### **2.3 PRIOR ACTIONS BEFORE LODGING THE ADMINISTRATIVE SANCTIONING PROCEEDINGS**

Once it has become known that work has begun on drawing up the reporting of the alleged offence or these initial actions have been received in the provincial office, and until such time as there are reports that might bear out the presence of toxins in the bait or specimens of fauna, actions will be initiated prior to the lodging of the administrative sanctioning proceedings. Bearing in mind the Procedural protocol for law enforcement officials in charge of surveillance and preventive action against use of poison in the countryside, these prior actions, by way of a guideline without pretending to be exhaustive, will consist of the following:

#### **Hunting:**

- When the facts of the case bear a possible relationship to hunting, either because of the use of the products in a registered and enclosed hunting ground or because the means of committal suggest this conclusion, the provincial coordinator will organise as soon as possible an exhaustive inspection of the hunting ground and its environs together with hunting experts and environment officers. This inspection will be especially geared towards the detection of other illegal or unauthorised animal-capturing methods, with entitlement to examine all previous applications made by tenure holders or operators of the hunting ground, with the corresponding authorisations or denial of authorisation. This will include authorisation given for releases, population reinforcements or restocking of hunting species. This inspection will also check for any other hunting or protection-of-biodiversity infractions. The provincial coordinator will be entitled to mobilise the resources he or she may deem fitting, resorting to inspection of the ground by sniffer dogs or any other resources currently to hand.
- Study of the consistency of the Technical Hunting Plan (*Plan Técnico de Caza*) currently in force with the actual situation of the hunting grounds, especially the hunting populations indicated therein and all references made to predators and predator-control precedents as requested by the particular hunting ground in question. The procedure will also include the *Plan Técnico de Caza* and the decision approving same, with due recording of its absence or obsolescence. If the hunting is carried out on public ground, express mention will be made of this fact.
- Analysis of any precedents in terms of earlier poisoning episodes on said ground, with documents proving same and the current state of any procedures underway in relation thereto. Succinct reference will be made to the animal species that might be affected by the use of poison and their current listing, with special reference to the presence in the



area of any listed as In danger of extinction, Vulnerable or Sensitive to habitat changes, as well as qualification of the terrain under any environmental protection schemes.

- Case records will also include documents pertaining to the granting of any public subsidy that the hunting ground or its tenure holders might have received for programmes of improvement, conservation of the environment, restocking of hunting species, etc.

### **Livestock farming:**

- When the facts of the case bear a possible relationship to livestock farming, the provincial coordinator will proceed to inspect the farms and terrain affected, doing so in liaison with livestock-farming experts and environment officers. This inspection will be geared towards the detection of any illegal or unauthorised animal elimination method and also to check that the farm is run within concepts of strict legality.
- Documents will be included pertaining to any preceding case of poisoning and also any subsidies received by the farm, breaking them down into the part made conditional on environmental friendly farming methods or the maintenance of biodiversity understood in its broadest terms.
- Express mention will be made of the tenure of the pastureland used by the livestock farm and its delimitation.

If the contents of the reporting of the alleged offence or any of the aforementioned activities point to the need of dictating previous measures prior to bringing the administrative proceedings, pursuant to article 72.2 of the Administrative Procedure Law 30/1992 of 26 November (*Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), in relation to concordant articles of the regional Hunting Act (*Ley de Caza*) or biodiversity- or species-protection-legislation, then previous measures may be dictated by the provincial delegate (*Delegado Provincial*).

In any case the finding of vestiges, bait or specimens of fauna shall be notified to the tenure holders of the farm in question as soon as possible.

### **2.4 ADOPTION OF PREVIOUS MEASURES**

These measures will be based on reasonable grounds for suspecting a case of poisoning (on the basis of the initial data recorded in the reporting of the alleged offence) and an urgent need for immediate protection of the public interests affected, particularly the health and safety of persons, the protection of certain listed animal species or biodiversity itself, and also to facilitate the investigation and search work. To this end the provincial coordinator will necessarily draw up a succinct report as soon as possible applying for these measures forthwith, giving reasons for their adoption and supporting his or her case as need be with the reports made by other experts or competent bodies.



These measures are valid for 15 days and have to be confirmed, modified or applied in the agreement to initiate the corresponding procedure, whether imposing a penalty or remedying damage or annulment or temporary closure of the registered hunting ground.

Some of the previous measures that may be dictated, by way of guidance, are the following:

- a) Suspension of hunting operations to facilitate the work of searching, investigation and determination of liabilities.
- b) Suspension of hunting operations to preserve food safety, forbidding the hunting of rabbits, hares and wild boar.
- c) Prohibition or restriction of access to persons due to the possible presence of poisoned bait; this would be directly enforceable in areas of public use or terrain of a public nature.
- d) Prohibition of livestock pasturing or droving.
- e) Instant suspension of authorised predation-control measures.

These measures will in all cases bear due proportion to the number of baits and animals found, their scattered location in different sites within one or more hunting grounds, reiteration in the appearance thereof and other circumstances deriving from the case file. Geographical delimitations might be made based on the points where the findings were made and other circumstances (for example 2000 metre radii from the point where the bait was found for one-off cases or the centre of a well-defined zone in the case of numerous scattered baits). These delimitations may temporarily be extended for as far as might be deemed necessary.

## **2.5 REPORT OF THE PROVINCIAL PLAN COORDINATOR**

The results of the chemical-toxicological analyses will be received by the official wildlife rescue centre (*Centro de Recuperación Oficial*), which will in turn send them on to the provincial plan coordinator together with the forensic report, necropsy report and definitive expert appraisal. When cases involve the finding of poison in baits or animals, the provincial plan coordinator will send case-related measures up to the legal section of the provincial office (*Delegación Provincial*) together with his or her own technical report, so that the provincial delegate (*Delegado Provincial*) can initiate the sanctioning proceedings with injunctions (which might consist in the confirmation and/or extension of the previous measures) and the remedial measures proceedings, all as administrative action, designating an investigating official and duly proceeding to notify all interested parties in good and due form.

The report of the provincial plan coordinator will have the following content:

- It will sum up the concurrent case facts and circumstances, including precise precedents.



- Location of the bait and intoxicated or dead animals found, with special indication of their geographical distribution within the farm or hunting ground.
  - Judgement of time spent in the field by the bait and animals on the basis of their state of conservation.
  - Closeness of the above to livestock farms or hunting grounds and their various fixtures (warden's lodge, farm buildings, paths, fences)
  - Season when the find was made (breeding season, closed season, decoy hunting season)
  - Amount of bait and way it was made
  - Amount of toxins found therein
  - Concealment or tampering of any type with the specimens of fauna found.
  - Presence of any other (authorised or otherwise) predation-control equipment or resources
  - Result of the searches made in fixtures or vehicles
  - Perimeter fencing or zones of restricted access
  - Existence of previous conflicts of any type
- The report will express and stress any other aspects of a technical character that might be important for dealing with the case.
    - Potential or actual risk to human health
    - Potential or actual risk to listed species
    - Degree of environmental protection of the terrain
    - Attitude and degree of collaboration of the tenure holders of the farms and their dependants or auxiliaries
    - Whether or not the aforementioned subjects had communicated the findings
    - Existence of anonymous phone calls
    - Precedents of other episodes and current state of said procedures
  - It will report on the need of bringing injunctions and/or initiating remedial measures proceedings with technical justification of same and their scope.
  - If any previous measures have been imposed, it should be remembered that they need to be raised, confirmed or modified within fifteen days of being dictated.
  - By way of conclusion an assessment will be made of the gravity or importance of the case from a technical point of view.

Once all the above has been effected, the provincial plan coordinator will notify the regional plan coordinator of measures and send up a copy or summary of all actions taken.

## **2.6 SHELIVING OF THE CASE**

If the analyses sent in show the non-existence of toxins the procedure will be shelved and the previous measures have to be raised, at least insofar as they are based on the assumed use of poison.



## **2.7 NOTIFICATIONS TO INTERESTED PARTIES**

In all cases interested parties have to be notified of the finding and collection of all types of samples and the other legal steps normally taken in the sanctioning proceedings.

At the discretion of the provincial coordinator, complementary notifications of an informative type may be made to councils, veterinarians, hunting or livestock-farming associations, etc., of the findings made, informing them of the gravity of the facts of the case, their possible repercussion on the countryside, the need of upping surveillance measures and the obligation of reporting the alleged offence, as part of deterrent and awareness-raising process.

## **3. ADOPTION OF REMEDIAL MEASURES**

Regardless of the bringing of an administrative disciplinary proceeding or even a judicial enquiry, the government authority will be entitled at any time to bring administrative proceedings for adoption of remedial measures to repair the damage caused by the appearance of bait or specimens of poisoned species of protected fauna.

### **3.1 GROUNDS FOR OPENING THE REMEDIAL MEASURES PROCEEDINGS**

These proceedings will be lodged necessarily and immediately upon cognisance of the facts of the case, in the following circumstances:

a) For geographical reasons: Zones that, due to their importance for biodiversity, call for an immediate response, such as the following:

a.1) Those defined as nesting-, dispersal- or feeding-areas of species listed as In danger of extinction.

a.2) Areas with the presence of strict or occasional scavengers whose feeding habits make them especially vulnerable to poisoned bait (Red Kite, Egyptian Vulture, etc).

b) Due to the species affected: Cases involving the poisoning of species of fauna whose importance calls for the immediate adoption of these measures, such as:

b.1) Any species listed as In danger of extinction, vulnerable or sensitive to habitat changes.

b.2) Significant mortality at local or district scale of any species listed as Of special interest.

c) Due to the substance or seriousness of the action: Cases so classified due to such circumstances as the following:

c.1) The wide area over which the bait was found and/or the large number thereof.

c.2) The number or variety of specimens of wildlife or domestic animals affected.

c.3) Precedents of earlier episodes within the same geographical area.



### 3.2. LEGAL BASE FOR THE ADOPTION OF REMEDIAL MEASURES

The lack of any specific regional legislation dealing with the repair of poison-caused damage makes it essential, at least for the moment, to refer to the enforcement of basic state legislation. The current framework is laid down by the Natural Heritage and Biodiversity Act 42/2007 of 13 December (*Ley de Patrimonio Natural y Biodiversidad*). This law, following on from the former article 34.d) of *Ley 4/89*, lays it down in its Title III (Conservation of biodiversity) of Chapter IV (On the protection of species in relation to hunting and freshwater fishing), article 62.d) that *temporary moratoria or special prohibitions may be established when deemed fitting for biological or health reasons*.

If this regional regulation exists, the procedure will be followed on the basis thereof. Practically all General Hunting Regulation Orders (*Ordenes Generales de Veda*) allow for suspension of the hunting activity for exceptional circumstances (fires, biological reasons, etc).

The adoption of these measures calls for a report from the experts of the Environment or Biodiversity Service (*Servicio de Medio Natural o Biodiversidad*), bringing out the damage to the ecosystem and the need and proportionality of suspension of the hunting activity, its reduction or bringing into line with the new situation to enable recovery of the environment by placing conditions on the hunting activity.

In current practice several “typical” reports can be established to suit the scale and situation of each particular occurrence. The provincial coordinator can therefore draw on these as a valuable time- and resource-saving aid of direct application.

### 3.3 GENERAL REMEDIAL MEASURES THAT CAN BE DECREED. GEOGRAPHICAL- AND TIME-FRAME

The measures taken on these legal grounds can therefore vary greatly in content and timeframe, since the end in view is the repair of the damage or impact. Nonetheless, due consistency needs to be maintained between different judgments to ensure that the criteria used are homogenous rather than arbitrary or patchy. In principle, therefore, the general measures that can be decreed will consist of the following, in decreasing order of importance according to the particular event in hand:

1. Banning of all hunting activity with no time limit (on a technical criterion after the corresponding check).
2. Reduction of hunting days or shortening of the time laid down in the hunting plan.
3. Reduction of the number of captures provided for in the hunting plan or replacement of this limitation by the voluntary carrying out of promotion measures under direct administrative supervision.
4. Banning the hunting of certain hunting species such as partridge and rabbit, retaining the allowance for wild boar, fox, crow species...



5. Banning predator control for certain periods or with given methods.

6. Banning certain hunting arrangements or the intensive character of the hunting ground.

The geographical scope of the measures: Impact on biodiversity knows no geographical-administrative boundaries of the hunting activity, so the extension of said measures should not necessarily be circumscribed to the hunting ground where the poisoning has been detected; rather should an assessment be made of the circumstances to weigh up the need of extending the ban to adjacent land in an objective way, in the interests of full recovery by the species affected.

As a general rule the principle worked from is the possibility of imposing the aforementioned measures on other terrain not belonging to the hunting ground that perpetrated the infraction, using 2 Km radii from the point of appearance of the bait or poisoned specimens whenever the scale of the infraction calls for same in terms of the number of baits found, the widespread distribution thereof, the species affected or the number of specimens found.

Use of the municipal district is also suitable when the scale of the events calls for same.

The minimum timeframe, for its very essence and without detriment to the possibility of review on technical data, is two years.

## **4. INVESTIGATION OF THE ADMINISTRATIVE PROCEEDINGS**

### **4.1 EXISTENCE OF EVIDENCE AGAINST A GIVEN PERSON**

Bringing of the sanctioning proceedings against the presumed perpetrator is possible only when there is some evidence in the particular events that directly or indirectly points to a given person or persons, whether natural or legal.

In this case and in most cases to date, the case file passes on to the corresponding investigator of the provincial legal section designated by the provincial delegate. If the evidence of all types does turn out to hold up the attribution of perpetration, the case file will then be sent on to the provincial prosecutor's office, with an indication of whether or not remedial measures proceedings have been initiated.

Another possibility, as applied by some *Comunidades Autónomas*, is for the provincial coordinator him/herself or even the investigating environment officers to proceed to send on the case file directly, leaving a record thereof among the administrative bodies. There is no legal impediment to direct sending on to the judicial bodies.

If the contents of the case file involve death or harm to species listed as In danger of extinction or Vulnerable within the Regional Catalogues of Threatened Species (*Catálogos Regionales de Especies Amenazadas*), the proceedings will be investigated also as an infraction against species.



If the above circumstances do not obtain, the case will be investigated as an infraction of the regional or state hunting law (*Ley de Caza*) if there are no regional regulations to work from.

#### **4.2 NON-EXISTENCE OF SUFFICIENT EVIDENCE FOR BRINGING CHARGES AGAINST A GIVEN PERSON**

If there is insufficient information for maintaining the charge in administrative proceedings against a given person, or the charge has been brought against persons other than the tenure holders of the hunting ground/farm in question or the rights in rem or of the use and enjoyment of the terrain where the bait and/or specimens of poisoned fauna have appeared, the sanctioning proceedings will immediately be opened on the grounds of failure to comply with specific obligations to impede the appearance of poisoned bait in the countryside, which will be dealt with independently of criminal proceedings until such time as the ruling is handed down. The latter is possible only in the *Comunidades Autónomas* that have passed the pertinent legal remedies.

It is vital to remember here that if the presumed perpetrators of the infraction are the wardens or working- or service-personnel dependent on the hunting ground, perpetrating the deed in the course of their normal duties, then the tenure holders thereof can also be considered to be perpetrators of the administrative infraction by vicarious liability, unless they can prove due diligence. The administrative sanctioning proceedings of the tenure holders can therefore be brought against same and suspended pending result of the criminal proceedings against their dependents. Should the warden or dependent be found guilty in criminal proceedings, once authenticated copy thereof has been received, then the suspension of the sanctioning proceedings shall be lifted on the grounds of the facts declared to be proven (conviction of warden or dependents), against whom there will be no sanction by application of the *non bis in idem* principle and the tenure holder will be sanctioned as perpetrator of the infraction of placing poisoned bait by vicarious liability in the acts committed by their dependents.

Likewise, with respect to legal persons, given that they will be sanctioned in administrative proceedings for the action of their bodies or agents when these are fulfilling their duties, the procedure shall be the same when the presumed perpetrator is a member of the company or agent thereof, so that the administrative sanction for the use of poisoned bait can be imposed after a criminal process declaring the culpability of one of the former.

In both cases acting with due respect for and abidance by the facts declared to be proven.

This is crucial nowadays because in criminal proceedings in which the hunting ground warden or workers of the livestock farm have been caught *in flagranti*, rapid convictions are sought due to the lightness of the penalty to be imposed, covering up in practice the person who has actually ordered the placement of the bait or the use of said method. The tactic of the convicted party in most cases is to benefit from a lighter punishment (there is no prison sentence and the fine is ridiculous compared with the administrative fine) and ensure it does not affect the “intellectual perpetrator” of the offence, who is covered up due to the convicted party’s working or economic dependence thereon. By obliging tenure holders to respond in



administrative proceedings for the actions of their dependents, they can be punished more substantially in administrative proceedings without the limitations of criminal proceedings.

In such cases things would obviously be held in abeyance until such time as the final judgment is handed down in criminal proceedings and special attention would need to be paid to the wording of the suspension resolution, making it clear that the sanctioning proceeding brought against the tenure holders is suspended pending the judicial decision in criminal proceedings (preliminary criminal ruling) so the basic fact of the perpetration of the offence by the dependent needs to be established by the criminal jurisdiction before going ahead with its ordinary processing.

#### **4.3 REFERRAL OF PROCEEDINGS TO THE PROVINCIAL PROSECUTORS' OFFICE**

In any case the investigator of the case file will suspend same in administrative proceedings after dictation of the due injunctions or imposition of remedial measures and will send the whole case file by the provincial delegate to the provincial prosecutor's office for a ruling on whether criminal proceedings should be brought in accordance with its own rules of procedure, pursuant to the provisions laid down in the Citizen Security Law (*Ley de Seguridad Ciudadana*) and Administrative Procedure Law (*Ley de Régimen Jurídico de las Administraciones Públicas*: LRJAP).

We should reiterate here that the referral can be done directly by the environment officers, according to unopposed legal precedent, but in all cases guaranteeing due administrative recording of this referral and processing of such remedial and sanctioning proceedings and injunctions, etc, as may be in order in each particular case.

The referral deeds will make express mention of the identification of the administrative sanctioning procedure, the decision on bringing the action, the referral agreement and a formal request of a note of referral of the decision that on any grounds that might bring the criminal proceedings to an end, sending an authenticated copy of all proceedings, whether by provisional dismissal of proceedings, free stay of proceedings, conviction or acquittal, so that any previously brought administrative actions can be pursued forthwith, thereby preventing both the case file and infraction from running its legal term of validity.

The referral deed will in all cases inform the provincial prosecutor's office of any injunctions adopted within the sanctioning procedure or the adoption of remedial measures, and also the regional government's situation as injured party if threatened species of fauna have appeared or any due process of law, in order that the pertinent offers of civil compensation actions can be made thereto or appearance in the competent courts to sustain the private prosecution.

The investigator and provincial plan coordinator shall be informed immediately of the deed of referral and also of the authority that has investigated the reporting of the offence. The provincial coordinator, in turn, will immediately bring it to the cognisance of the delegated environment public prosecutor (*Fiscal Delegado de Medio Ambiente*) of each provincial prosecutor's office and also the regional coordinator for all due purposes and effects.



## 5. ADOPTION OF INJUNCTIONS

On the basis of the report drawn up by the provincial plan coordinator, the investigator will decide whether injunctions should be brought (Article 72 LRJAP), proposing same to the provincial delegate as the competent body.

Their aim will be to:

- Avoid continuance of the infraction
- Avoid aggravation of the damage caused

Some of the possible injunctions to be taken out, to suit each particular case, are the following:

- Suspension of population control measures, since the use of poisoned bait means that opportunistic, omnivorous species like foxes, magpies, carrion crows, etc, might be reduced in number, whereby the authorisations granted in the technical hunting plan can no longer continue to vouchsafe said practice.
- Suspension of the hunting of hares and wild boar for human consumption, due to the possibility of contamination.
- Suspension of hunting with dogs to avoid accidents.
- Should investigations to date, the initial circumstances of the case and accredited evidence point clearly to the use of poisoned bait as a hunting practice allowed or countenanced by the tenure holders, suspension of its status as a registered hunting ground to avoid continuance of said practices. This might also be extended to any other hunting grounds run by the same tenure holders within the same *Comunidad Autónoma*.
- Suspension of livestock grazing or droving rights.

## 6. APPEARANCE BY THE REGIONAL GOVERNMENTS AND NGOs AS ACCUSING PARTIES IN CRIMINAL PROCEEDINGS

Appearance by *Comunidades Autónomas* as accusing parties (private prosecution) calls for express agreement of their governing councils (*Consejos de Gobierno*). The decision will therefore be reserved, on the initiative and at the discretion of the regional coordinator of the action plan, for proposal in those criminal procedures that, due to damage caused to biodiversity or the natural values of the region or for other reasons of public transcendence or environmental importance, are initially considered to justify appearance therein, its legal services carrying out the accusation on the basis of facts as declared therein.



For these purposes the regional coordinator will draw up a documented report with grounds recording all the reasons why, in his or her judgment, such an appearance would be recommendable, stressing the initial existence of sufficient elements of proof that would, in his or her judgment, lend viability to this accusation, plus such objective reasons as would vouch for private prosecution by the *Comunidad Autónoma*. This report will be sent up to the environment-portfolio-holding regional minister (*Consejero*) to obtain his or her approval for proceeding in due course with the law.

If finally there is appearance by the *Comunidad Autónoma* through its legal counsel in the proposed procedure, this will immediately be brought to the cognisance of the provincial coordinator of the action plan for all due effects and purposes.

Likewise, at the discretion of the regional plan coordinator, an information letter could be sent to the various NGOs carrying out specific programs to combat the use of poisoned bait within his or her area of remit, to inform them of the existence of the criminal procedure in question with a brief summary of the facts behind it and allow them to appear also as accusing parties in due accordance with the internal rules and bylaws of each one.

## **7. MONITORING OF CRIMINAL PROCEEDINGS**

Criminal procedures will be monitored by the investigators of the sanctioning proceedings, who will liaise for that purpose directly and personally with the delegated environment prosecutors (*Fiscales Delegados de Medio Ambiente*) existing in each provincial prosecutors' office. Periodic information-seeking communications will thus be sent to find out the progress made therein.

If the number of investigators or other circumstances dictate same, the coordination and liaison task will fall exclusively and in each province on one of them designated for that purpose, who will have to monitor all criminal proceedings, whether or not sanctioning proceedings have yet been brought.

The investigators will periodically inform the provincial plan coordinator of the current state of criminal procedures with an updated list at least every six months, informing the regional coordinator thereof with the same frequency.

If the *Comunidad Autónoma* itself has appeared in proceedings as accusing party, monitoring will be affected by direct liaison of the investigator with the legal service of the *Comunidad*.

If any NGO also presses charges the investigator will be entitled to seek such informative collaboration as he or she may need therefrom.

## **8. ADMINISTRATIVE MEASURES AFTER THE RULING OF THE CRIMINAL PROCEEDINGS**



Once the criminal proceedings have resulted in a final ruling, a complete authenticated copy will be received from the secretary of the corresponding court or said copy will be sought from same as an interested party.

a1) Upon receiving an authenticated copy of the final ruling, if the warden, worker or dependent of the hunting ground or any of the agents of members of the corporate bodies of the tenure-holding legal person has been convicted for placement of bait and/or the death of listed species of fauna, the suspension of the sanctioning proceedings brought against the tenure holders will be lifted for the purposes of continuing the prosecution against them as perpetrators thereof.

a2) At the same time, on the basis of the facts declared to be proven in the judgment, and providing this judgment refers to the tenure holder of the hunting ground or dependents of the former, an administrative proceeding will be initiated to proceed to cancellation of hunting rights or temporary closure of the hunting ground as incompatible with maintenance of biodiversity.

This is not a sanctioning procedure punishing the same acts but rather the need of complying with the provisions laid down in article 62.3 h) of the Natural Heritage and Biodiversity Act 42/2007 of 13 December (*Ley del Patrimonio Natural y de la Biodiversidad*) which lays it down that *when it is proven that the management procedures in any hunting ground adversely affects the renewal or sustainability of resources, the public authorities will be entitled to totally or partially suspend the hunting rights.* This provision is in keeping with the principles underpinning hunting sector legislation (Law and annual Hunting Regulation Orders).

The phases of this procedure will be:

1. Upon arrival of the authenticated copy of the court record, a previous report will be issued by the provincial plan coordinator. This report, in light of the criminal procedure and its conclusion and all the administrative and judicial measures carried out to date, will establish proof of the use of poisoned bait as a hunting method, its impact, the presence of other banned or unauthorised methods for capturing or killing animals, inconsistency between the actual hunting methods of the hunting ground and that established in the technical hunting plan or annual plans, continuity, gravity or intentionality of the infraction, etc., laying down the fundamental grounds and technical criteria of the proposal made in order to suspend hunting activity and the exact content thereof.
2. Initiation of the procedure, if in order, by the provincial delegate with the environment remit, proposing, in light of the aforementioned report and documents attached thereto or referred to therein, the specific measures to be taken. These may range from temporary and/or partial suspension of hunting rights up to total suspension of hunting rights in the most serious cases.
3. Notification of the holder of hunting rights, to make due allegations and have his or her opinions heard.



4. Application for a report from the Provincial Hunting Council (*Consejo Provincial de Caza*) in its capacity as a consultative, non-binding body.

5. Administrative ruling and notification.

b) If the case has been shelved or set aside on the grounds that the facts sent for criminal jurisdiction do not constitute an offence, then the sanctioning proceedings will be reopened in basic case processing, allocating culpability or liability in due accordance with existing proof in view of the lack of any binding declaration on the facts by criminal jurisdiction. The case will then be pursued according to the provisions laid down in point III of this protocol.

c) If the ruling is an acquittal: the investigator will reinitiate the administrative proceedings on the basis of facts declared to be proven in the judgment, ensuring they are respected at all moments.

If the acquittal has been due to merely formal reasons rather than fundamental grounds of law, administrative sanctioning proceedings will be reopened with careful avoidance at all times of these formal irregularities and without using any evidence that has been declared to be illicit.

The following people have collaborated in drawing up this document

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