

Chancellor of Justice

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**Application of the Nature Conservation Act**

Honourable Linda-Mari Väli

You asked the Chancellor of Justice to evaluate whether the extant norms are sufficient for applying § 55 sc 6-1 of the Nature Conservation Act.

The Environmental Board is capable of setting grounded and proportional limitations (incl. temporal limitations) to a forest notification with regard to the nesting period. Thus I find that the necessary norms to achieve the aims of the NCA exist.

The purpose of the Nature Conservation Act is ensuring the conservation of biodiversity ([NCA § 1 p 1](#)) and the Forest Act's (FA) purpose is also ensuring forest biodiversity, among other purposes ([FA § 2 sc 1 and 2](#)). The Parliament amended the Nature Conservation Act in 2008, adding a norm which prohibits the intentional destruction and damaging of the nests of naturally occurring bird nests and bird eggs and intentional disturbing of birds, especially during nesting period ([NCA § 55 sc 6-1](#)). Intentional disturbing of birds during nesting and bringing up younglings is only allowed as self-defence ([NCA § 55 sc 3 p 1 and sc 6-1 p 2](#)). The Environmental Board may issue a permit to destroy, damage or remove nests and eggs or otherwise intentionally disturb the birds in the interests of the safety of the populace or air safety. A permit may also be issued if it is necessary to protect important agricultural crops or animals, to keep from damaging fish farms or other important assets or for the purpose of education or science ([NCA § 55 sc 3 p 2-5 and sc 6-1 p 1 and 2](#)).

Thus intentional disturbing of birds is prohibited as a general rule, especially during nesting time. The violators of the prohibition may be punished with a monetary fine ([NCA § 77 sc 1 and 2](#)). According to the [Penal Code § 16 sc 1](#), intent is deliberate intent, direct intent and indirect intent (see also [PC § 16 sc 2-4](#)). Among others, an offence is deemed deliberate which a person commits with indirect intent, or when he or she finds it possible that birds are being disturbed during the nesting period, the nests and eggs are being destroyed or damaged. The Supreme Court of Estonia has said that "when a person knowingly creates a causal chain flow, whose course and consequences he is not capable, competent or willing to control, he also at the same time approves of those consequences in the meaning of indirect intent".<sup>1</sup> The Environmental Inspectorate may punish the person ignoring the prohibition and recover the damages done to nature ([NCA § 77 sc 1 and 2](#)).

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<sup>1</sup> RKKKo, [3-1-1-76-16](#), p-d 16, 17

Restriction of logging to protect birds and beasts is also regulated by the Forest Act. Based on that act's § 40 section 10 the Minister of the Environment may restrict logging for protection of fauna (incl. avifauna) on their breeding period in multi-layered forests and mixed-stand forests from 4/15 to 6/15. To this day, the Minister of the Environment has not used that possibility granted him with the law and enacted logging restrictions with his decree.

The Forest Act's § 40 section 10 is a norm which enables the Minister of the Environment to impose a general restriction and the Environmental Board may solve the logging requests regulated and covered by the decree according to it. If the minister has not issued the decree, decisions should be based on NCA § 55 sc 6-1.

To get the permit from the state to commence logging works, the forest owner or his representative must issue a forest notification to the Environmental Board ([FA § 41 sc 1, 6, 7, 8, 8-1, 13 and 14](#)). The forest owner may commence the logging during 12 months after registering the logging of the forest protection expertise act at the Forest Registry ([FA § 41 sc 13](#)). When receiving a forest notification, the Environmental Board must check whether the planned logging is in accordance with the requirements of the legal acts. When the logging does not conform to the requirements, the Environmental Board has a right to refuse registering the logging. The refusal should be reasoned in writ and also suggestions should be made to make the actions conform to the legal acts. If the logging activity conforms to the requirements of the legal acts, the Environmental Board will register it at the Forest Registry ([FA § 41 sc 1, 6, 7, 8, 8-1, 13 and 14](#)).

The Environmental Board must therefore simultaneously assess the forest notification's accordance to the requirements and whether the requested logging is in accordance with the legal acts (The [Minister of the Environment's decree](#) "The listing of the data presented on the forest notification and the procedure and terms of registering, processing and registering the forest notification § 2), while guaranteeing that the requirements of NCA § 55 section 6-1.

The prohibition enacted with the Nature Conservation Act § 55 section 6-1 must be followed by the performer of the forest works and it must also be followed by the state while giving the permit for that activity. Although the performer of the forest works makes the first-hand assessment of the existence or non-existence of the nests, the environmental officials must also have a good understanding of the probable nesting preferences of birds according to forest type and the effects of different logging methods during the birds' nesting period. Assessing the impact of different logging methods to the avifauna has to be based on scientific studies and upon necessity, the forest notification should receive proportional requirements, which would ensure a reasonable balance between the forest owners' and nature protections' interests. The executive power cannot leave the NCA § 55 section 6-1 unconsidered and the impact of logging on the birds nesting peace unassessed, putting all responsibility on the performer of the works.

The Forest Registry has an announcement on the opening page: "Attention! Destruction of birds' nests and eggs and intentional disturbing of birds is prohibited. Therefore we suggest refraining from logging activities during the high point of bird nesting, from April 1<sup>st</sup> to July 31<sup>st</sup>." This kind of notification might not be sufficient to fulfill NCA § 55 section 6-1 nor achieve the purposes laid down in the Nature Conservation Act and Forest Act.

Respectfully

*/signed digitally/*

Ülle Madise

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English translation by Martin Luiga, might contain errors