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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Bureau of the Standing Committee

18-19 March 2024
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Complaint on stand-by: 2022/03

**Wolf Culling Policy in Norway
(Norway)**

- COMPLAINANT REPORT -

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NOAH | for dyrs
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To:

Bureau of the Standing Committee of the Bern Convention

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9 February 2024

Second update report on complaint no. 2022/03 Wolf Culling Policy in Norway

In reference to the letter of 20 April 2023 of the Bureau of the Bern Convention, complainants NOAH – for animal rights, Margareth Konst, Stefanie Reinhardt and prof. Ragnhild Sollund (referred to as “the Complainants”) are hereby submitting an update report to the Bureau meeting in Spring 2024, and – as requested by the Bureau – in particular highlighting if there has been any changes to the culling policy and to share updates on relevant internal court proceedings. The Complainants have included excerpts from witness statement made by prof. Arie Trouwborst (University of Tilburg) at Oslo District Court in May 2021 in the legal case brought by NOAH against the government decision on the culling of a wolf pack in the wolf zone in 2020.

Summary

The government of Norway has continued with extensive lethal control of the wolf population in Norway in 2023 and has allowed culling of 40 wolves this winter, out of a population of 66-68 wolves. The number of wolves in 2022/2023 has decreased by 20-25 individuals compared to registration season 2021/2022 (**30% decrease**), and the lowest number of wolf packs has been registered since winter 2014/2015. The Supreme Court of Norway issued a judgment in May 2023 on the legal validity of the government decision on the culling of a wolf pack in the wolf zone in 2020. Both the court of first instance and the appeals court declared the culling decision invalid and found that the decision failed to show what specific interests justified setting aside the strict protection of wolves in the wolf zone. The courts agreed with NOAH that the political will to keep the wolf population at a pre-determined population target level – and the general consideration of “conflict mitigation” in wolf management – is not a sufficient ground for derogation. The appeals court emphasized that due to “*the modest protection wolves ... outside the wolf zone, the goal and obligation to have a viable Norwegian sub-population of wolves must in practice be fulfilled within the five per cent of Norway’s land territory that constitutes the wolf zone*”, and that the protection level of wolves therefore must be “considerably higher” in the wolf zone (as compared to the rest of the country). The appeals court found that this higher protection level was not upheld and declared the decision invalid. The Supreme Court concluded that the culling decision was legally valid. It recognized a wide margin of discretion to the administration provided that the wolf population is maintained at the population target in Norway. The Court considered this target level as sufficient to meet obligations in Article 2 of the Bern Convention by the Norwegian government. However, no proper legal reasoning was provided for this conclusion. The judgment also lacks a proper legal review of all the three conditions that must be met for a derogation under Article 9 of the Convention and fails to address how “higher protection” of wolves is ensured in the wolf zone. In the Complainants’ view, the judgment provides no guidance for determining whether the wolf culling policy in Norway is compliant with the Bern Convention. In the wolf culling decisions 2023/2024, the authorities have pushed the limits of “margin of discretion” even further – the aim of license hunting in the wolf zone is to cull wolf packs “just in case” so that the population target – 4-6 breeding wolf packs (corresponding to 40-60 wolves) – in the future (in 2024) will not be exceeded. The Complainants refer to the Tapiola-judgment of the Court of Justice of the European Union and the subsequent judgments of the Finnish Supreme Administrative Court in similar cases where it is established that controlling the population to a pre-determined target level is not an accepted aim of derogation-based culling of large carnivores. Prof. Arie Trouwborst has stated the following in his witness statement at Oslo District Court in 2021: “... *the position that the wolf zoning system and population target currently in place in Norway*

could somehow still be reconciled with Norway's obligations under the Bern Convention, seems completely indefensible". The Complainants uphold their complaint in full and argue that by adopting annual decisions on the culling of wolves with the aim of keeping the wolf out of 95% of Norway's land territory and keeping the wolf population at an extremely low level in the remaining 5% of the territory – with the consequence of the wolf remaining as critically endangered (CR) on the national Red list of Species – Norway has breached Articles 2, 4, 6 and 9 of the Bern Convention and continues to do so until the present day.

1. Wolf population status in 2022/2023 and wolf culling in 2023/2024

During the registration season 2022/2023, the South Scandinavian wolf population was estimated to consist of around 510 wolves (the number of reproductions – 51 – is multiplied by 10) of which 450 are found in Sweden and **around 60 in Norway**.¹ The wolf population in Norway has had a declining trend in the last four years – registrations in winter 2022/2023 show the lowest number of wolf family groups in Norway since winter 2014/2015 and the lowest number of wolf reproductions since 2013 (six breeding family groups of wolves). The number of wolves in Norway has decreased by 20-25 individuals compared to registration season 2021/2022. The Norwegian Databank for Species assessed the conservation status of the wolf population in Norway in 2021 (Red list of Species 2021) and concluded that *"Wolf (Canis lupus) is assessed as critically endangered CR because the species has very few breeding individuals in Norway (D1 criterion)"*.² The wolf population in Sweden is categorized as "threatened" (EN).³ It is also important to note that Norwegian authorities have permitted culling of immigrant wolves that are potentially genetically important in winter 2023/2024. In January 2024, offspring of a genetically important wolf (F1-individual) was accidentally killed during the license hunt in the wolf zone which has further undermined the already precarious genetic situation of the South Scandinavian wolf population. It is very worrisome that the government is planning a further reduction of the current and already very low wolf population target of 4-6 reproductions per year. In autumn 2023, the state environmental board published an assessment and recommended strongly against such reduction of the population target.⁴

The Ministry of Climate and Environment adopted the following quotas for population control in 2023/2024: **the total quota is at 40 wolves**, of which 26 wolves outside the wolf zone, and 12 wolves (three wolf packs) in the wolf zone near the border with Sweden which was increased with another 2 wolves during the culling.⁵ These new culling quotas for population control demonstrate that restricting the natural range of the wolf population in Norway to 5% of its land territory (the so-called wolf zone) is a systematic and established practice. Since 2019, it has become an established practice to cull wolves also in the wolf zone. In 2022-2023, another three wolf packs were culled and altogether 20 wolves were killed.⁶ It has been confirmed by the Minister of Climate and Environment in the press release issued by the Ministry after the culling quotas for wolves in the wolf zone were approved: *"This year's decision is a continuation of the same practice on which previous years' decisions are based"*.

The reasoning behind the decision of 21 December 2023 on the culling of three wolf packs in the wolf zone is as follows: *"In contrast to previous years, the annual report for the 2022/2023 season shows that the population is now at the population target level, not above as it has been every year since the 2015/2016 registration season. In the Ministry's view, consideration of the aim that the population is kept as close to the population target as possible dictates that a license hunting shall be carried out this year. The directorate's advice shows, in the Ministry's view, that a license hunting aimed at family groups or territory-marking pairs is necessary if the population is to be kept as close to the population target as possible. Without such license hunting, given the wolf's reproduction rate and wolves migrating from Sweden, there is reason to believe that in the spring of 2024 (which will appear in the annual report in June 2025) there will be reproductions of wolves exceeding the population target."*

¹ In the Norwegian sub-population 66-68 wolves were counted, including half of the 46-48 cross-boundary wolves and 43-44 wolves confirmed only in Norway. The full report can be accessed at: <https://brage.nina.no/nina-xmlui/handle/11250/3068933>

² <https://artsdatabanken.no/lister/rodlisterforarter/2021/2251>

³ <https://artfakta.se/naturvard/taxon/canis-lupus-lupus-100024>

⁴ <https://www.miljodirektoratet.no/publikasjoner/2023/september-2023/utredning-om-endering-av-bestandsmal-for-uly-i-norge/#:~:text=1%20rapporten%20utredes%20en%20reduksjon,endre%20gjeldende%20bestandsm%C3%A5%20for%20uly.>

⁵ As of 9 February 2024, 16 wolves have been culled in the wolf zone and 2 wolves in other areas in Norway. The culling of wolves in the wolf zone ended on 21 January; the culling outside the wolf zone lasts until 31 May 2024.

⁶ <https://www.ssb.no/en/jord-skog-jakt-og-fiskeri/jakt/statistikk/registrert-avgang-av-store-rovdyr>

This is a good example of how the authorities are pushing the limits of “margin of discretion” under the law to such extremes so that the mere presence of wolves is used as a ground for culling, without showing how particular wolves have caused hardships or in other ways hinder the achievement of important and overriding public interests in the wolf zone. In addition, the aim of license hunting has changed from removing wolf packs that exceed the population target to removing wolf packs “just in case” so that the population target in the future (in 2024, as reported in 2025) will not be exceeded. Furthermore, while the culling decisions in 2018-2021 targeted wolf packs that had been stable in a certain area over a period of time (3-5 years) based on the (scientifically unfounded) assumption that “stable wolf packs can be perceived locally burdensome”, the authorities are now justifying the culling of “new” wolf packs (1-2 years) with the fact that the area has been inhabited by wolves over a period of time.⁷ At the same time, the Ministry admits that culling is ineffective, by stating that “*culling specific wolf packs within the wolf zone will not remove such disadvantages in the long term, as one must expect the occurrence of both lone wolves and new territory establishments in the areas relatively quickly*”, but still permitted culling in order to keep the wolf population down at a politically pre-determined (and critically endangered) level.

2. The aim of keeping the wolf population at a certain pre-determined level is not an acceptable aim under Article 16 of the Habitats Directive and neither should it be accepted under Article 9 of the Bern Convention

The Complainants argue that justifying culling with the politically pre-determined population target and the general and ambiguous ground of “conflict mitigation” in wolf management is not in line with the letter and spirit of the Bern Convention. It is clear that the Ministry also is in breach of the limitation set to its “margin of discretion” by the Supreme Court whereby only “specific circumstances” can justify a derogation in the wolf zone, especially when the wolf population is small.⁸ The appeals court put it succinctly: “*A wolf population that is too large will first and foremost be able to lead to conflicts as a consequence of the tangible hardship this results in, and not as a consequence of the number of wolves in itself. ... [I]t must be required that, inside the wolf zone, this hardship is demonstrated and tangibly specified. It is not sufficient to point to abstract presumptions that any deviation from the population target provokes conflict in and of itself.*”

Prof. Arie Trouwborst acted as an expert witness at Oslo District Court in the case brought by NOAH against the government on the culling of wolf packs in the wolf zone. The witness statement by prof. Trouwborst constitutes a specific and objective legal assessment of the main elements of wolf management in Norway and is in large part based on his scholarly writings in this area of international environmental law.⁹ Prof. Arie Trouwborst noted the following in his witness statement:

“Another thing to note is that the objective of the Bern Convention is nature conservation, not conflict mitigation. The Convention was adopted because some species were being reduced to an absolute minimum or even eradicated. It aims precisely to restore such species, *despite* any opposition by human populations.” (Emphasis in the original)

The Complainants refer to their update report of 31 January 2023 where we called upon the Bern Convention organs to look at the possibility of encouraging a harmonized practice concerning the interpretation and application of exception grounds in Article 9 of the Bern Convention and Article 16 of the Habitats Directive 92/43/EEC. Norwegian authorities have resorted to Article 9(1)(c) – other overriding public interests – as the legal ground for culling of wolves, while Article 16(1)(e) of the Habitats Directive has been used as the main legal ground for population control of wolves in Finland and Sweden. Although the specific legal ground is different, the justifications used by Norway, on the one hand, and Sweden and Finland, on the other hand, are similar – to keep the population at a certain pre-determined level. However, the restrictions applicable under the last indent of Article 9(1) are not applied to wolf culling in Norway, because the last indent has not been transposed into Norwegian law

⁷ This is also due to the fact that all stable wolf packs (older than 1-2 years) have been eradicated in Norway.

⁸ The Supreme Court, however, did not strictly follow up on this limitation regarding the contested decision because the Court considered that the population target had been exceeded “with a relatively good margin” in the years 2015-2019.

⁹ Prof. Trouwborst is a highly qualified and respected legal expert in international environmental law and the Complainants ask the Bureau to consider his witness statement as a subsidiary means for the determination of rules of law, according to the Statute of the International Court of Justice, Article 38(1)(d). <https://treaties.un.org/doc/source/docs/charter-all-lang.pdf#page=23>

(and the culling decisions have been based on indent c instead). In recent years, the decisions on wolf culling in Finland have been declared legally invalid by the Supreme Administrative Court of Finland, following the reasoning of the Court of Justice of the European Union in the Tapiola-judgment.¹⁰ According to these judgments, **population control as such cannot be the aim of the derogation, even if the culling has no harmful effect on the conservation status of the respective large carnivore species.**¹¹

3. Norwegian authorities assess negative effects of culling only in relation to the whole South Scandinavian wolf population whilst applying a lower level of protection than Sweden

In the culling decision of 21 December 2023, the Ministry has assessed the negative effects of culling and that it “will not be detrimental to the survival of the population concerned” only in relation to the whole South Scandinavian wolf population, and not in relation to the wolf population in Norway. In its assessment, the Ministry states further that the Habitats Directive requires a higher level of protection – “favourable conservation status” – for the South Scandinavian wolf population than the condition “survival of the population is not threatened” in the derogation clause of the Bern Convention. It then concludes that “*If the former condition is met, it means that the latter condition is also met*”, referring to the obligations of Sweden and emphasizing that Norway is not bound by the Habitats Directive. It is evident, therefore, that Norwegian authorities are relying heavily on the wolf population in Sweden and Sweden’s obligations under the Habitats Directive when determining the scope of Norway’s obligations according to Article 2 and when resorting to derogations in Article 9.

In the Supreme Court judgment of 2021, the court concluded that Norway is obliged to ensure only the population target – 4-6 breeding wolf packs – in Norway. It added:

«It must nonetheless be clear that it is not required that the Norwegian part of the population is so big that it is viable in itself. Nor can I see that Article 2 imposes a responsibility on the individual Contracting Party for a specific part of the total population, provided that the survival of the total population is not threatened.»

The Court remained silent on who and to what extent should be responsible for *providing* “that the survival of the total population is not threatened”. When looking at the factual circumstances, it is clear that it is Sweden who bears the main burden. As the Complainants argued in the update report of 31 January 2023, Norway has unilaterally limited its responsibilities under the Convention to a mere fraction of the South Scandinavian wolf population. Norway’s wolf culling policy also has a sink effect on the wolf population in Sweden and is consequently detrimental both to the survival of the Norwegian wolf population and the South Scandinavian wolf population as a whole.

In his witness statement, prof. Trouwborst commented this question in the following manner:

“Another question, which is very relevant to the Norwegian situation, is to what extent a **transboundary wolf population**, which is shared between various countries, can be taken as the **benchmark** for the purposes of the Bern Convention instead of the *national* wolf population – particularly when assessing whether the standards laid down in **Articles 2 and 9** are met.

Unless I am gravely mistaken, adopting the transboundary population as the only or at least the decisive benchmark is highly problematic in general; and simply not an option in the current Norwegian situation. It’s important to dwell on this for a moment, as this is evidently crucial for present purposes.

First, it is *doubtful whether the transboundary approach is legally viable* at all. A Bern Convention report written by a legal expert in 2005 explains why:

“From a legal point of view, the matter is clear. Consistent with State sovereignty, each Party has sole responsibility for developing and implementing the measures for species and habitats on national territory that it has accepted under the Convention, including decision-making on possible derogations. These national responsibilities are underpinned by general obligations

¹⁰ C-674/17, Luonnonsuojeluyhdistys Tapiola, <http://curia.europa.eu/juris/liste.jsf?num=C-674/17> (10 October 2019)

¹¹ KHO:2023:99 (30.10.2023): <https://www.kho.fi/fi/index/maatokset/vuosikirjapaatokset/1698309665993.html>; KHO:2022:48 (12.04.2022): <https://www.kho.fi/fi/index/maatokset/vuosikirjapaatokset/1649324951374.html>

for international cooperation under the Convention and customary international law. They cannot be delegated because a species or habitat is thriving beyond national boundaries (where the Party concerned has no legal or management powers). For wolves, this means that even if the portion of a population found across an international boundary is secure, this does not justify a derogation if the population on national territory is not viable.”

Second, *even if* we assume that the transboundary approach as such were legally valid, *the conditions for its application in the Norwegian situation are presently not met*. It may be argued – although, as just illustrated, this remains contested – that the transboundary population is an appropriate level of assessment for the application of Articles 2 and 9 of the Bern Convention, *if and when* certain conditions are met. These include the existence of *formal safeguards at the transboundary population level*, agreed by the authorities of the countries involved, including agreement on overall minimum population targets, division of population numbers amongst countries, safe legal offtake, and division of such potential offtake between countries. Such agreement between Sweden and Norway currently does *not* exist (despite some generally phrased agreements and a good level of technical cooperation).

Therefore, the unavoidable conclusion is that currently, we must look exclusively at the wolf population on Norwegian territory when assessing whether Norway is complying with its obligations under Article 2, 4, 6 and 9, and disregard the wolves in Sweden and beyond.

Incidentally, even if wolves across the border *could* be included in the legal equation, it is still doubtful whether this would make any significant difference to the current situation, given that wolves in Sweden are nationally red-listed as ‘Endangered’ .» (Emphasis in the original)

The culling quotas adopted by Norwegian authorities on an annual basis since 2017 constitute 2/3 of the Norwegian wolf population per year, resulting in the **extermination of nearly 30% of the Norwegian wolf population every year**. The Complainants argue that the wolf culling decisions are in breach of the condition “not be detrimental to the survival of the population concerned” in Article 9 and constitute breaches of Articles 2 and 6 of the Bern Convention.

4. Norwegian zoning management effectively excludes wolves from 95% of Norway’s land territory whilst wolf numbers are actively controlled in the remaining 5% in breach of Article 4

Under this section, the Complainants would like to highlight the following parts of the witness statement by prof. Arie Trouwborst:

“**Negative** zoning, in the sense of designating areas where wolves are *less* welcome, or not at *all*, is very uncommon by comparison. This appears to be both for practical reasons and legal ones. Especially where Appendix II applies, the scope for establishing and operationalizing wolf exclusion zones or low-density zones appears extremely limited – given the required prohibitions of killing and capturing of individual animals in Article 6 and the mandatory route of using derogations under Article 9 of the Convention. Indeed, when a species has the highest possible degree of protection under international law, it is to be expected that declaring the presence of that species as undesirable in significant parts of a country is hard to justify. The main examples of negative zoning for wolves are the northern parts of Finland and Sweden, and of course the situation in Norway. And all three of these are legally controversial.

...

Article 4, read in light of subsequent Resolutions and Recommendations, calls for conservation of the most important habitats for wolves in each country. If any *negative* zoning takes place at all, then one would *also* expect a sufficient number and size of protected areas for wolves, which are completely tailored to the species’ needs, and where the interest of wolf conservation takes precedence over other interests. Needless to say, a situation wherein the largest part of a country is declared off-limits to the species, and wolves are not even safe in the small areas designated for it, would seem to be incompatible with Article 4.

...

It is for the authorities to demonstrate that the three conditions of Article 9 are met, on a case-by-case basis. Showing this in advance for the entire duration of the zone appears very difficult to do, for instance given uncertainty about how many wolves this will concern, in relation both to the conditions of alternatives and population status.

...

I know of no other country that has practically excluded wolves from **95%** of the territory. Norway's policy seems to be unprecedented in this regard. ... To me, the position that the wolf zoning system and population target currently in place in Norway could somehow still be reconciled with Norway's obligations under the Bern Convention, seems completely indefensible.“ (Emphasis in the original)

5. The condition “there is no other satisfactory solution” is legally rendered as irrelevant in Norway

When it comes to finding and implementing alternative solutions to the culling policy outside the wolf zone, the Supreme Court stated in 2021 that it is not necessary to consider other satisfactory solutions outside the wolf zone, if the government's aim is to keep 95% of the Norwegian land territory wolf-free. The Complainants have argued in their Complaint that this kind of approach makes the condition “there is no other satisfactory solution” in Article 9 legally meaningless and irrelevant. In its judgment of 2023 (English translation attached), the Supreme Court has accepted – at face value – the Ministry's argument that lethal control of the wolf population is the only effective means to address “overriding public interests” also in the wolf zone. The Court dismissed the counterargument made by NOAH that there is no scientific evidence provided by the government supporting the assumption that culling has a “conflict mitigating” effect and that no other satisfactory solutions exist. Research results indicate that rather the opposite is true: a scientific report published in Sweden on the effects of wolf culling in 2021 concluded that culling had no real effect on the public's attitudes towards wolves, wolf management or trust in management authorities.¹² The Complainants refer to the Tapiola-judgment and a judgment by the Supreme Administrative Court of Finland¹³ where the courts emphasized that the aim of culling has to be defined precisely and it has to be demonstrated with clear and conclusive scientific data that the derogation permit is capable of achieving the aim set for it. Neither of these conditions are met in the Ministry's culling decisions.

Conclusion

The Complainants ask the Bureau to elevate the complaint against Norway's wolf culling policy from status “Stand-by” to “Possible File” and bring it to the agenda of the next Standing Committee meeting. Considering the pressure from certain political groups both in Norway and Sweden to lower the population target for wolves even further, it is important that the issues raised in the Complaint and the update reports shall be addressed at the highest political level.

Yours Sincerely,

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¹² S. Dressel, G. Ericsson, S. Lindgren & C. Sandström, Rapport 7087, September 2023: <https://naturvardsverket.diva-portal.org/smash/get/diva2:1801448/FULLTEXT02.pdf>

¹³ KHO:2020:28 (19.03.2020): <https://www.kho.fi/fi/index/maatokset/vuosikirjapaatokset/1584437840273.html>



NORGES HØYESTERETT

RULING

handed down on 16 May 2023 by the
Supreme Court, sitting as a panel comprising

Judge Hilde Indreberg
Judge Kristin Normann
Judge Henrik Bull
Judge Ingvald
Falch Judge Knut
Erik Sæther

***HR-2023-936-A, (case no. 22-144944SIV-
HRET)***

Appeal of Borgarting Court of Appeal's
ruling of 6 July 2022

The Norwegian State represented by the
Ministry of Climate and Environment

(Office of the Attorney General
represented by Attorney Asgeir
Nygård)

Utmarkskommunenes Sammenslutning
[Association of Outlying Municipalities]
(intervenor)

Norges Bondelag [The Norwegian
Farmers Union] (intervenor)

(Attorney Stein Erik Stinessen)

Norges Skogeierforbund [The
Norwegian Forest Owners Federation]
(intervenor) Norskog (intervenor)

v.

NOAH – for dyrs rettigheter [NOAH –
for animal rights]

(Attorney Berit Svensli Solseth)

VOTING

(1) Judge **Falch**:

The issues and background to the case

- (2) The case relates to the validity of an administrative decision concerning the licensed hunting of wolves inside the designated wolf zone. It raises particular questions about whether the killing could be authorised to protect “other public interests of substantial importance”, see Section 18 of the Nature Diversity Act [Naturmangfoldloven].
- (3) The decision on the licensed hunting was taken by the Ministry of Climate and Environment on 31 December 2019, after a complaint was filed against a decision taken by the Large Carnivore Boards in regions 4 and 5. The Ministry’s decision authorised the licensed hunting of up to six wolves in the Letjenna pack, whose home range is located in the Municipality of Åmot in Innlandet County. The objective was to cull all the wolves in the pack. Four wolves were killed before hunting was halted.
- (4) The Large Carnivore Boards had also decided to cull all the wolves in the Mangen and Rømskog packs – a total of up to 17 wolves in three packs. The Ministry rescinded the Board’s decision to cull the last two packs mentioned.
- (5) The NGO NOAH – for dyrs rettigheter (in the following “NOAH”) took the Government to court, with the request to declare the Ministry’s decision on the licensed hunting of wolves invalid. On 9 July 2021, Oslo District Court handed down the following judgment:
- “1. The Ministry of Climate and Environment’s decision of 31 December 2019 is invalid.
 2. The Norwegian State, represented by the Ministry of Climate and Environment, is ordered to pay NOAH – for dyrs rettigheter the sum of NOK 639,783 – six hundred and thirty-nine thousand, seven hundred and eighty-three Norwegian kroner – in costs no later than two weeks after this ruling has been served.”
- (6) The Government appealed, and Borgarting Court of Appeal handed down a ruling on 6 July 2022, with the following judgment:
- “1. The appeal is rejected.
 2. In costs for the Court of Appeal, the Norwegian State, represented by the Ministry of Climate and Environment, shall pay NOAH – for dyrs rettigheter the sum of NOK 1,000,000 – one million Norwegian kroner – no later than two weeks after this ruling has been served.”

- (7) Both the District Court and the Court of Appeal found that the decision on the licensed hunting of wolves was invalid because the condition set out in Section 18(1)(c) of the Nature Diversity Act – “to protect ... other public interests of substantial importance” – had not been met. Neither the District Court nor the Court of Appeal therefore addressed NOAH’s submission that the objective could in any case be achieved in another satisfactory manner, see Section 18(2).
- (8) The Government has appealed to the Supreme Court. The appeal relates largely to the application of law.
- (9) Utmarkskommunenes Sammenslutning (USS), Norges Bondelag, Norges Skogeierforbund and Norskog have acted as intervenors for the Government in the matter before the Supreme Court. USS also acted as intervenor when the case was heard by the Court of Appeal.

The parties’ views on the case

- (10) The appellant – *the Government represented by the Ministry of Climate and Environment* – has essentially asserted the following:
- (11) The Court of Appeal was wrong when it interpreted Section 18(1)(c) of the Nature Diversity Act such that the killing of wolves in the wolf zone was lawful only if it could be proved that the wolves concerned caused particular inconvenience or additional strain. When the population target has been reached, the provision authorises killing, provided this is done in accordance with a safe, controlled and rational control of the population.
- (12) The decision in question meets these criteria. The decision follows up the large carnivore policy adopted by the Norwegian parliament (the Storting) and the directives given in the Act’s preparatory works. This ensures predictability in the management of large carnivores, which in turn strengthens the inhabitants’ trust in it and reduces conflict. Conservation considerations are adequately safeguarded once the wolf population target has been reached. This balancing of considerations gives little room for strict judicial control.
- (13) The purpose of culling cannot be achieved in any other satisfactory manner, see **Section 18(2) of the Nature Diversity Act**.
- (14) The Norwegian State has submitted the following claim:
 - “1. That the Supreme Court find in favour of the Norwegian State, represented by the Ministry of Climate and Environment.
 2. That the Norwegian State, represented by the Ministry of Climate and Environment, be awarded costs in the District Court, the Court of Appeal and the Supreme Court.”
- (15) The intervenors – *Utmarkskommunenes Sammenslutning, Norges Bondelag, Norges Skogeierforbund and Norskog* – endorse the Government’s view and have emphasised in particular:

- (16) The Court of Appeal's ruling contains several errors. For example, the Court relies on a different assessment topic than the Supreme Court did in HR-2021-662-A *Licensed Hunting of Wolves I*. The assessment topic is the same both inside and outside the wolf zone, with the only difference being that the population target must be met inside the zone. The population target is a key management tool, which strengthens predictability particularly for those who live and work in the wolf zone. The Court of Appeal's interpretation of law is due to increase the level of conflict.
- (17) The intervenors have submitted the following claims:
- “1. That the Supreme Court find in favour of the Norwegian State, represented by the Ministry of Climate and Environment.
 2. That Utmarkskommunenes Sammenslutning be awarded costs in the Court of Appeal.
 3. That Utmarkskommunenes Sammenslutning, Norges Bondelag, Norges Skogeierforbund and Norskog be awarded costs in the Supreme Court.”
- (18) The defendant – *NOAH – for dyrs rettigheter* – has essentially asserted the following:
- (19) The Court of Appeal's justification of its ruling is correct, with a couple of exceptions: It is not correct that the courts shall be reticent in their judicial review, nor is it correct that significant weight shall be accorded to the fact that the population target has been met. The issue has weight, but not significant weight.
- (20) Section 18(1)(c) of the Nature Diversity Act points to a broad balancing of interests. Zone-based management results in wolves being accorded greater protection inside the wolf zone than outside it. The establishment of the zone constitutes a prior balancing of interests. If culling is to take place, something more is required, some additional strain that exceeds the expected inconvenience caused by the existence of wolves within the wolf zone. Conservation considerations are safeguarded in practice only inside the wolf zone. That the population target has been met reduces the weight accorded to conservation considerations but does not cancel them out.
- (21) The decision points to no specific inconveniences, strains or problems relating to the Letjenna wolf pack. It rests solely on entirely general considerations that are a consequence of the establishment of the wolf zone, and on unsupported suppositions about trust and conflict mitigation. No account has been taken of the fact that culling will have a conflict-generating impact for many people, and thereby undermine trust in the large carnivore management.
- (22) The objective of the culling could in any case be achieved in another satisfactory manner, such as through systematic awareness campaigns, science-based knowledge dissemination and, if necessary, financial support schemes.

(23) NOAH has submitted the following claims:

- “1. That the appeal be rejected.
2. That NOAH – for dyrs rettigheter be awarded costs in the Supreme Court.”

My opinion in the case

Section 18(1)(c) of the Norwegian Nature Diversity Act

Legal bases

(24) Pursuant to Section 15 of the Nature Diversity Act, the harvesting and removal of animals that occur naturally in the wild shall be authorised by statute or a decision pursuant to statute. The decision to cull the wolves was taken pursuant to Section 18(1)(c), see also paragraph 2, which states:

“The King may make regulations or individual decisions permitting the removal of wildlife and salmonids and freshwater fish

...

c. to safeguard general health and safety interests or other public interests of substantial importance.

...

Decisions under paragraph 1 (a) to (f) may only be made if the removal does not jeopardise the survival of the population and the purpose cannot be achieved in any other satisfactory manner. When considering the removal of large carnivores under paragraph 1(c), weight shall be accorded to whether the population targets determined by the Storting have been reached.”

(25) The last sentence in paragraph 2 was included in the Act when it was amended in 2020, which was after the culling decision had been made. I will return to the significance of this shortly.

(26) The Supreme Court applied Section 18(1)(c) in its ruling HR-2021-662-A *Licensed Hunting of Wolves I*. There, the rule was described thus in paragraphs 101 and 108:

“As I see it, the key restriction is that the public interests must be of ‘substantial importance’. Particularly seen in light of the term ‘overriding’ in Article 9(1)(3) of the Bern Convention, it is natural to understand this to mean that the public interests must be so substantial that they weigh more heavily than the conservation considerations that also apply. In other words, this points to a *balancing of interests*, in which various public interests are seen in conjunction – and are cumulated – on each side. In my opinion, the wording indicates that a single overall balancing of interests shall be performed.

“All in all, this means that, in my opinion, section 18(1)(c) of the Nature Diversity Act permits a broad range of public interests to be included. However, before killing may be decided, these interests must together apply in such a material degree that they weigh heavier than the considerations in favour of conservation. This assessment must be performed specifically, but what the Storting described as rural policy considerations will carry material weight.”

- (27) In other words, a balancing of interests must be performed. The “rural policy considerations” include consideration of the “livestock farming industry, hunting, the local population’s safety and psychosocial factors of a general nature”, see paragraph 105.
- (28) The Supreme Court’s specific assessment of whether the condition had been met, in the Licensed Hunting of Wolves I ruling, is informed by the fact that the decision related to the culling of wolves found *outside* the wolf zone. The management of large carnivores in Norway is differentiated. This means that wolves should, in principle, be able to move about only within certain delimited areas – the wolf zone – see, for example, paragraphs 10 and 11. Paragraph 105 therefore states that ‘there is, in principle, a presumption that wolves which are found outside the wolf zone may be killed under Section 18(1)(c) if the national population target has been met.
- (29) The question in this case is whether the balancing of interests is, in practice, different when the wolves are to be found *inside* the wolf zone. In light of the Government’s submissions and the framing of the culling decision, there is a key sub-question about the significance of the fact that the Storting’s population target had been met.

Significance of the population target being met

- (30) According to Section 3 of the Large Carnivore Regulations, Norway shall have “4–6 wolf reproduction events (litters) per year. Three of these shall have taken place in wolf packs found entirely in Norway. If a wolf pack’s home range lies partly in Sweden, a reproduction event shall be accounted for with a factor of 0.5. Pursuant to Section 4(d) and (e), this population target shall be achieved in regions 4 and 5 which, pursuant to Section 2(d) constitute the wolf zone.
- (31) The population target was adopted by the Storting following its deliberation of Report to the Storting (white paper) Meld. St. 21 (2015–2016), see Recommendation to the Storting, Innst. 330 S (2015–2016). The objective is that the wolf population “shall be managed such that it lies as close to the nationally determined population target as possible”. At the same time, however, it is made clear that wolves “shall ... be managed within the framework of the Bern Convention and the Nature Diversity Act”, see pages 4 and 8 of the Recommendation to the Storting. The actual target interval was set in light of the Swedish population target and with the aim of fulfilling the requirements set out in the Convention and the Act, see pages 109–116 of the Report to the Storting. On page 8 of the Recommendation to the Storting, the Parliamentary Committee’s majority describes the principles on which wolf management in Norway rests.

“The majority wish to underline that we must protect the wolf in Norwegian nature and that the wolf, like other biodiversity, has intrinsic value. The majority points out that the wolf is protected in Norway, it is few in number and it is classified as critically endangered on Norway’s Red List for Species 2015. The majority considers that management of the wolf must not hinder the active use of uncultivated resources and vibrant local communities, and that Norway takes independent co-responsibility for ensuring a viable Scandinavian wolf population within Norway’s borders. The majority acknowledges that living with large carnivores close at hand may cause a strain on individuals and local communities.

“The majority wishes to underline that management of the wolf population must strive to engender trust and respect in the population and seek to reduce the level of conflict.”

(32) The population target that has been set therefore rests on a *general balancing of interests* between conservation considerations on the one side and a variety of other public interests on the other. At the overarching level, this balancing of interests is fairly similar to that envisaged in Section 18(1)(c) of the Nature Diversity Act.

(33) On page 10 of the Recommendation to the Storting, Innst. 257 L (2016–2017), which in paragraph 106 of the Licensed Hunting of Wolves I ruling is given the same weight as the Act’s preparatory works, it states that the balancing of interests under Section 18(1)(c) **“shall be of a dynamic nature”**. **The Committee’s majority then states:**

“The majority considers this to mean that in periods when the population exceeds the population target, the threshold for determining when the conditions have been met for killing in order to safeguard public interests shall be lowered. The majority wishes to underline that the authorities must, when deciding to kill animals, demonstrate how the balancing of interests has been performed and that this has a rational justification.”

(34) In my view, this accords with how Section 18(1)(c) shall be applied. When the wolf population exceeds the population target, conservation considerations have a weaker standing than they would otherwise have. This has the consequence of lowering the requirements for other public interest considerations in the balancing of interests. However, I emphasise that there still must be a threshold. The condition for derogation-based killing is not met solely because the population target has been reached.

(35) One consequence of differentiated wolf management in Norway is that conservation considerations must mainly be achieved within the wolf zone. Conservation considerations include the objective of biodiversity in Section 1 of the Nature Diversity Act, the management objective in Section 5 and the precautionary principle in Section 9. On page 10 of the previously mentioned Recommendation to the Storting, Innst. 257 L (2016–2017), another Committee majority expresses the view that “wolves shall have greater protection inside the wolf zone than outside it”, with the proviso that such protection must not prevent people residing and undertaking normal business and leisure activities within the zone.

- (36) This means that a key factor when applying Section 18(1)(c) is whether or not the population target has been met. The wording added to Section 18(2) in 2020 – that **“weight shall be accorded to” whether the population target has been met – is thus nothing more than a restatement and clarification of that which already applied.**
- (37) The Government has, with particular reference to the proposers’ reasoning in Proposal to the Storting, Representantforslag 67 L (2019–2020), contended that the additional wording makes it clear that *substantial* weight must be accorded to whether the population target has been met. I do not read the additional wording in this way.
- (38) The proposal did not gain majority support in the Recommendation to the Storting, Innst. 297 L (2019–2020). However, this changed during the Storting’s debate, when the governing parties endorsed the proposal. As the member for the Conservative Party of Norway (Høyre) said on behalf of the ruling coalition, this was because the additional wording “will largely be in line with current practice but is nevertheless an important clarification that should be included in the legislation”. See the deliberations on case no. 10 on 3 June 2020, S.tid. no. 89 (2019-2020), page 4024. That the weight attaching to the fact that the population target has been reached may vary and, in practice, may be substantial when the target has been exceeded by a considerable margin over time, is a different matter.

Summation of the norm

- (39) Section 18(1)(c) of the Nature Diversity Act requires that a balancing of interests be performed also when the issue relates to the culling of wolves inside the wolf zone, as explained in paragraphs 101 and 108 of the Licensed Hunting of Wolves I ruling.
- (40) The population target rests on a general balancing of relevant interests which, when the target has been met, lowers the threshold for culling. It is therefore reasonable to start by considering whether or not the target has been met and, if so, by how large a margin. But in any case, a specific assessment must nevertheless be conducted, based on an updated factual foundation. This means that the decision-making authority – also in cases where the population target has been met – must identify which public interests speak in favour of culling and then weigh them against the applicable conservation considerations.
- (41) As previously mentioned, paragraph 105 of the Licensed Hunting of Wolves I ruling makes it clear that, in principle, there is a presumption that wolves may be culled when the population target has been met. In light of what I have said, I cannot see that the same presumption is applicable inside the wolf zone, where the wolf is assumed to enjoy greater protection than outside. Inside the zone, the specific circumstances will have a more decisive impact.

Specific assessment

- (42) In its decision on the licensed hunting, the Ministry states that the population target *was reached* the year before: In 2018/2019, eight reproduction events were reported. Five of these took place in packs residing entirely within Norway and six residing partially in Sweden. In 2017/2018, there were a combined total of 10.5 reproduction events. In 2016/2017, there were 7.5 reproduction events and in 2015/2016 nine such events. In all of the last four years prior to the decision, the population target of four to six reproduction events per year, of which at least three were in wholly Norwegian packs, was reached by a relatively good margin.
- (43) This means that the threshold for culling in Section 18(1)(c) of the Nature Diversity Act was lowered. That the population target had over time been met by such a clear margin indicates that conservation considerations had a relatively weak standing. However, this is corrected for by the fact that the population was “characterised by **inbreeding and ... challenges relating to poaching**”. **The Ministry therefore followed the Norwegian Environment Agency’s recommendation to manage the wolf population “in the upper part of the national target interval”.**
- (44) The Ministry then analysed the probability of the population target being met in the *coming years* should the Letjenna, Mangen and Rømskog packs all be removed in accordance with the Large Carnivore Boards’ decision. Here, the Ministry endorses the Norwegian Environment Agency’s assessment, which was that sufficient wolf litters would “most probably” be born, such that the population target would also be met in 2019/2020. It has further been disclosed that the Letjenna pack does not include genetically important individuals. NOAH has no objection to these assessments.
- (45) The Ministry then analysed the “other public interests” – *rural policy considerations* – which indicated that the Letjenna pack should be culled. The Ministry concludes that consideration for the livestock farming industry, hunting and the local population’s safety and psychosocial circumstances carry limited but “some” weight.
- (46) NOAH has objected that these interests are described in wholly general terms, without pointing to any particular factors relating to the Letjenna pack. According to NOAH, the interests are no different to those that follow from the very establishment of a wolf zone.
- (47) I agree that, for the most part, the decision here points only to fairly general factors. But seen in light of the fact that the culling threshold was low because the population target had been met by a good margin over time, and that it was also probable that the population target would be met after the wolves in the Letjenna pack had been killed, I consider that these rural policy considerations carry weight in the balancing of interests.
- (48) In its concluding assessment, the Ministry touches on the need to take account of *conflict mitigation and trust* issues. It is pointed out that the strain imposed by the wolves in the Letjenna pack “is reinforced by the fact that the pack has been stable over a long period of time and has at times contained a large number of animals”, which “helps to fuel the conflict relating to the management of large

carnivores”.

(49) To this, NOAH has objected that stable packs create predictability in the use of an area and in their behaviour, and that new wolves often take over the home ranges of wolves that have been culled. Such characteristics and impacts are, however, uncertain. Furthermore, stable packs may, over time, be perceived locally as burdensome. In my opinion, therefore, the Ministry’s view has in any case weight in a conflict-mitigation perspective.

(50) In conclusion, the Ministry writes:

“The Ministry has also given weight to the fact that the level of conflict relating to the wolf population in Norway has for some years been so high that reducing the level of conflict must be deemed of substantial national interest, which is encompassed by rural policy considerations. Reducing the wolf population when we have for some years exceeded the population target will, in the Ministry’s assessment, help to reduce conflict and thereby safeguard rural policy interests, as well as help safeguard trust in the public management of large carnivores.”

(51) NOAH has not contested that the level of conflict has been high but claims that the culling of wolves does not reduce the level of conflict but rather has a conflict-increasing effect for some people. However, I have no grounds to doubt that the balancing of interests on which the culling decision rests, and which is in line with the presumptions adopted by the Storting, increases the predictability of large carnivore management and has a conflict-mitigating effect overall.

(52) Nevertheless, I consider it a weakness that the Ministry, in its decision, has not more clearly identified and balanced the conservation considerations that apply as well. It appears, however, that the animals to be culled were not genetically important and that conservation considerations were decisive in the decision not to also cull the Mangen and Rømskog packs. I would also like to mention that the portion of the decision which discusses the population’s survival emphasises and takes account of the fact that the wolf is an endangered species in Scandinavia and that the Norwegian subpopulation is red listed as critically endangered. Otherwise, the scientific foundation appears to be solid. I therefore consider that the decision does, in reality, rest on a balancing of conservation considerations against the previously mentioned public interests.

(53) As stated in paragraph 115 of the Licensed Hunting of Wolves I ruling, the interests to be balanced here are of very different nature. It will therefore “in the final analysis, be a matter of discretionary judgement which of them will be considered as prevailing”.

(54) All in all, therefore, in light of the specific situation that existed, the balancing of interests that the Ministry undertook in the decision cannot be set aside on the grounds that it was incorrect. The condition set out in section 18(1)(c) of the Nature Diversity Act was therefore met.

Section 18(2) of the Nature Diversity Act

- (55) The first sentence in Section 18(2) of the Nature Diversity Act requires that the “purpose cannot be achieved in any other satisfactory manner”.
- (56) In my opinion, it must be clear that the purpose of safeguarding those public interests that substantiate the condition in Section 18(1)(c) cannot be achieved in any other satisfactory manner than the culling of the wolves in the pack. In the broad balancing of interests that has already been performed, culling has been included as a suitable measure to fulfil the above-mentioned public interests.
- (57) In its decision on the licensed hunting, the Ministry discusses the specific inconveniences that may be alleviated through alternative measures, such as information, knowledge dissemination, prevention and financial support schemes. The Ministry considers that such measures would neither alleviate the inconveniences nor successfully reduce the level of conflict. I have no objections to this assessment.
- (58) This condition in the first sentence of Section 18(2) of the Nature Diversity Act was therefore met.

Conclusion and costs

- (59) The Government’s appeal has been successful. The Supreme Court therefore finds in favour of the Government.
- (60) In principle, the Government and the intervenors are entitled to have their legal costs covered, pursuant to Section 20-2(1) of the Norwegian Disputes Act. However, I consider that an exception must be made in this case because there are compelling grounds to exempt NOAH from covering their costs in all judicial instances, see Section 20-2(3).
- (61) I refer here to the relative strength of the parties as justification for this. NOAH is a non-profit organisation. The case has raised legal questions of principal importance that have not previously been clarified. The clarification benefits the Government and the intervenors at least as much as it benefits NOAH.

(62) I vote for this

RULING:

1. The Supreme Court finds in favour of the Norwegian Ministry of Climate and Environment.
2. No costs are awarded in any judicial instances.

(63) Judge **Normann:**
concur

In all essentials and as regards the conclusion, I
with the first-voting judge.

(64) Judge **Bull:**

Likewise.

(65) Judge **Sæther:**

Likewise.

(66) Judge **Indreberg:**

Likewise.

(67) Following the voting, the Supreme Court issued the following

RULING:

1. The Supreme Court finds in favour of the Norwegian Ministry of Climate and Environment.
2. No costs are awarded in any judicial instances.

**This document accords with the
original: Håvard Kaasen**