

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.*”

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 (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 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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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/sepember-2023/utredning-om-endering-av-bestandsmal-for-ulv-i-norge/#:~:text=I%20rapporten%20utredes%20en%20reduksjon,endre%20gjeldende%20bestandsm%C3%A5%20for%20ulv.>

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>

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>

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>

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>