

**PROTECTION OF THE WOLF IN THE CONTEXT
OF POLISH ADMINISTRATIVE LAW**

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ABSTRACT

In view of the fact that about 80% of the wolf's population in Europe is of cross-border type, the conservation status of a particular wolf's population depends on the sum of the states national regulations sharing the population. The Polish national regulations thus have an impact upon the protection of three wolf's populations in Europe. They should thus become an object of interest also at the international forum. This article presents the broad-based Polish system of administrative and legal regulations of wolf's protection aimed at accomplishment of international and EU obligations. Poland, due to the relatively advanced level of legal protection of the wolf, may play a substantial role in restoring the population of this carnivore to the territories of many western European countries (the process already initiated through the presence of Polish wolves in Germany).

Key words: protection of the wolf, administrative law

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INTRODUCTION

In view of the fact that about 80% of the wolf's population in Europe is of cross-border type, the conservation status of a particular wolf's population depends on the sum of the states national regulations sharing the population¹. The Polish national regulations thus have an impact upon the protection of three wolf's populations in Europe². They should thus become an object of interest also at the international forum. Poland, due to the relatively advanced level of legal protection of the wolf, may play a substantial role in restoring the population of this carnivore to the territories of many western European countries (the process already initiated through the presence of Polish wolves in Germany).

Unlike the frequently discussed environmental and social aspects of the conservation of wolf species within the territory of Poland, the issue of the administrative and legal protection of the wolf is rarely discussed in the literature. This article presents the broad-based Polish system of administrative and legal regulations of wolf's protection aimed at accomplishment of international and EU obligations. The main aim of this article is to provide an overview and discussion of domestic Polish legislation and policy concerning wildlife conservation not only at the national but also at the international level.

¹ John Linnell, Valeria Salvatori, Luigi Boitani, *Guidelines for population level management plans for large carnivores in Europe. A Large Carnivore Initiative for Europe report prepared for the European Commission*, (Large Carnivore Initiative for Europe, Rome, 2008), p. 10.

² Poland shares parts of its wolf populations with several countries: i.a. with Lithuania, Russia, Belarus, Ukraine (Northeastern Europe population), i.a. with Czech Republic and Slovakia (Carpathian population); with Germany (Central Europe Population). See: Table 4 'Overview of the population structure of wolves (*Canis lupus*) in Europe', [in:] John Linnell, Valeria Salvatori, Luigi Boitani, *Guidelines for population level management plans for large carnivores in Europe. A Large Carnivore Initiative for Europe report prepared for the European Commission*, (Large Carnivore Initiative for Europe, Rome, 2008), p. 48; Table S9 'Wolf population names, countries and literature references', [in:] Guillaume Chapron et al, *Recovery of large carnivores in Europe's modern human-dominated landscapes*, 'Science' 2014, Volume 346, issue 1517, supplementary materials, pp. 26-27.

It is worth noting that the protection of the wolf in Poland dates back to the beginnings of the 1990s, but the wolf was recognised as a species that should be afforded strict, countrywide, year round protection already as late as the 1990s. At the end of the twentieth century the wolf population in western Poland obtained the status of critical endangered³. The adopted legislative system led to the rebuilding of the wolf population also in that part of Poland⁴.

THE LEGAL STATUS OF WOLF IN POLAND

Creation and implementation of laws that provide efficient legal instruments for conservation of the wolf has to start with analysis of the overall *de facto* and legal situation and taking it under consideration. Poland has some experience in the field of legal protection of this carnivore, since legal instruments protecting the wolf were introduced to the Polish legal system long before Poland's accession to the EU. The protection of the wolf in Poland dates back to the beginnings of the 1990s, when the wolf was granted year-round protection in Poznań Voivodship by Poznań Voivode order no. 2/92 of 13 April 1992⁵. It has to be noted that the order was the first regulation in Poland but also one of the first regulations in Europe, providing protection to the wolf in its natural habitat⁶. The precedent in Poznań Voivodship made it possible to introduce similar legislation in oth-

³ Robert W. Mysłajek, Sabina Nowak, *Podręcznik najlepszych praktyk ochrony wilka, rysia i niedźwiedzia brunatnego*, (Environmental Projects Coordination Centre, Warsaw, 2014), p. 61.

⁴ Henryk Okarma, Roman Gula, Piotr Brewczyński, *Krajowa strategia wilka warunkująca trwałość gatunku w Polsce*, (Nature Conservation Institute, Warszawa, 2011), p. 26 and next.

⁵ Dziennik Urzędowy Województwa Poznańskiego [English: Official Journal of Poznań Voivodship] 1992 No. 6, item 40.

⁶ Andrzej Bereszyński, *Wilk (Canis lupus Linnaeus, 1758) w Polsce i jego ochrona*, (AR, Poznań, 2003), p. 75. Wolves across Italy have been strictly protected under domestic legislation since the 1970.

er voivodships⁷. Year-round protection of the wolf was then successively introduced in the Gorzów Wielkopolski, Szczecin, Jelenia Góra, and Piła voivodships⁸.

Since 1 April 1995, by order of the Minister of Environmental Protection, Natural Resources and Forestry dated 6 January 1995⁹, the wolf has been a protected species in Poland, with the exception of three voivodships: Krosno, Przemyśl and Suwałki. In those three voivodships, the wolf was considered a wild game animal under per the Minister of Environmental Protection, Natural Resources and Forestry¹⁰. However, the Voivodes of Przemyśl and Suwałki Voivodships granted the wolf year-round protection¹¹,

⁷ For example, see Rozporządzenie Nr 11 Wojewody Gorzowskiego Gforzowskiego z dnia 17 lipca 1992 r. w sprawie gatunkowej ochrony zwierząt [English: Order No. 11 of Gorzów Wielkopolski Voivode of 17 July 1992 on protection of animal species] (in *Dziennik Urzędowy Województwa Gorzowskiego* [English: Official Journal of Gorzów Wielkopolski Voivodship] 1992, No. 8, item 81); Rozporządzenie Nr 1/93 Wojewody Szczecińskiego z dnia 18 lutego 1993 r. w sprawie wprowadzenia gatunkowej ochrony wilka [English: Order No. 1/93 of Szczecin Voivode of 18 February 1993 on protection of the wolf] (in *Dziennik Urzędowy Województwa Szczecińskiego* [English: Official Journal of Szczecin Voivodship] 1993, No. 3, item 36); Rozporządzenie Nr 30/93 Wojewody Piłskiego z dnia 3 września 1993 r. w sprawie gatunkowej ochrony zwierząt [English: Order No. 30/39 of Piła Voivode of 3 September 1993 on protection of animal species] (in *Dziennik Urzędowy Województwa Piłskiego* [English: Official Journal of Piła Voivodship] 1993, No. 11, item 90).

⁸ Andrzej Bereszyński, *Wilki (Canis lupus Linnaeus, 1758) w Polsce i jego ochrona*, (AR, Poznań, 2003), p. 75.

⁹ *Dziennik Ustaw* [English: Journal of Laws] 1995 No. 13, item 61.

¹⁰ Rozporządzenie Ministra Ochrony Środowiska, Zasobów Naturalnych i Leśnictwa z dnia 30 stycznia 1995 r. w sprawie uznania niektórych gatunków dzikich zwierząt za łowne oraz wyłączenia niektórych gatunków ze spisu dzikich zwierząt łownych [English: Order of Minister of Environmental Protection, Natural Resources and Forestry of 30 January 1995 on classifying some species of wild animals as game and excluding some from the list of wild game animals] (in *Dziennik Ustaw* [English: Journal of Laws] 1995, No. 11, item 50); and Rozporządzenie Ministra Ochrony Środowiska, Zasobów Naturalnych i Leśnictwa z dnia 3 grudnia 1996 r. w sprawie ustalenia listy gatunków zwierząt łownych oraz określenia okresów polowań na te zwierzęta [English: Order of Minister of Environmental Protection, Natural Resources and Forestry of 3 December 1996 on the list of species of game animals and the hunting seasons for these species] (in *Dziennik Ustaw* [English: Journal of Laws] 1997, No. 1, item 5).

¹¹ Rozporządzenie Nr 41 Wojewody Przemyskiego z dnia 1 grudnia 1994 r. w sprawie wprowadzenia ochrony gatunkowej wilka na obszarze województwa przemyskiego

exercising the right granted to them by the Nature Conservation Act of 16 October 1991¹².

On 29 April 1998, by order of the Minister of Environmental Protection, Natural Resources and Forestry of 2 April 1998, which amended the order on protection of animal species¹³, the wolf became a protected species across the whole country. At the same time, it was removed from the list of game animals, which eliminated the possibility of killing wolves in legal hunts. Currently, the wolf is protected under the Regulation of the Minister of the Environment of 6 October 2014 on protection of animal species¹⁴, passed under authorisation in article 49 of Nature Conservation Act (hereinafter 'NCA')¹⁵. This Act states that the wild wolf is under strict protection and requires active conservation.

It is notable that the wolf is under strict protection in Poland, even though the Polish wolf population was excluded from Annex IV of the Habitats Directive¹⁶, which means it does not have to be under strict protection¹⁷. Similarly, when Poland ratified the Berne Convention on 12 July 1995¹⁸, it was with the reservation that the wolf conservation status in

[English: Order No. 41 of Przemysł Voivode of 1 December 1994 on protection of the wolf in Przemysł Voivodship] (in *Dziennik Urzędowy Województwa Przemyskiego* [English: Official Journal of Przemysł Voivodship] 1994, No. 18, item 113); *Rozporządzenie Nr 25 Wojewody Suwalskiego z dnia 8 kwietnia 1993 r. w sprawie wprowadzenia ochrony gatunkowej rysia, wilka, głuszca, cietrzewia i jastrzębia* [English: Order No. 41 of Suwałki Voivode of 8 April 1993 on protection of the lynx, wolf, capercaillie, black grouse and hawk] (in *Dziennik Urzędowy Województwa Suwalskiego* [English: Official Journal of Suwałki Voivodship] 1993, No. 10, item 74).

¹² *Dziennik Ustaw* [English: Journal of Laws] 1991 No. 114, item 492 as amended.

¹³ *Dziennik Ustaw* [English: Journal of Laws] 1998 No. 47, item 298.

¹⁴ *Dziennik Ustaw* [English: Journal of Laws] 2014, item 1348.

¹⁵ *Dziennik Ustaw* [English: Journal of Laws] 2015, item 1651 as amended.

¹⁶ Directive of the Council No 92/43/EEC dated 21 May 1992 on the natural habitats and wild fauna and flora conservation, Official Journal of the European Union No. L 206/7 dated 22.07.1992.

¹⁷ Henryk Okarma, Roman Gula, Piotr Brewczyński, *Krajowa strategia wilka warunkująca trwałość gatunku w Polsce*, (Nature Conservation Institute, Warsaw, 2011), pp. 19-20.

¹⁸ Convention on the Conservation of European Wildlife and Natural Habitats concluded in Bern on 19 September 1979, *Dziennik Ustaw* [English: Journal of Laws]

Poland shall be different than prescribed by Annex II of the Convention, which lists the animal species under strict protection.

Reservations both to the Bern Convention and the habitats directive have also been made by many other states¹⁹, which undoubtedly contributes to lower effectiveness of those documents. It led among others to a diversified legal status of the wolf in different states, which is not favourable considering the transboundary type of most wolf's populations. The particular case is Poland, which negotiated Annex V status for its wolves (imposing only the obligation of assuring the right conservation of the wolf's species) when it prepared for its accession to the EU in 2004, given that it had strict protection in place under national law since 1998. In case of the EU law acts, the member states are subject to inspection whether they implement the acts of law. By excluding the Polish population of wolf from Attachment IV to the Habitats Directive, Poland avoided the possibility of inspection at the EU level whether the strict protection of wolf in the country is really guaranteed. It must also be added that a state assuming stricter requirements following the Bern Convention or the Habitats Directive becomes more restricted in its freedom of further creating (changing) the national law in that respect (in case of e.g. change of economic or social situation). However, the Bern Convention or Habitats Directive guarantee the minimum standards of the wolf conservation in the area of states - parties of the Convention/EU Member States.

LEGAL CONSEQUENCES OF THE WOLF CONSERVATION IN POLAND

The fact that the wolf is protected under Regulation of the Minister of the Environment of 6 October 2014 on the protection of animal species

1996, No. 58, item 264, available at: <<http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>>.

¹⁹ Kaczensky *et al.* (*supra* note 6, Part 2), p. 62 and following pages; Table 5. 'Overview of the international conventions and treaties that the various countries of continental Europe have signed, with details of any species - specific exceptions', [in:] Linnell, Salvatori, Boitani (*supra* note 1), p. 49.

not only means that wolves cannot be hunted²⁰, but also mean, according to Article 52 paragraph 1 of the NCA, in reference to wild wolves, like other protected animal species, that the following are forbidden:

- a) deliberate killing, capture and mutilation;
- b) transport, rearing or breeding;
- c) collecting, acquiring, holding, keeping or preparation of specimens;
- d) destruction of habitats or sites where reproduction, rearing, rest, migration, or feeding takes place;
- e) destruction or damage to, or removal of, burrows, lairs, and other resting places;
- f) deliberate prevention of access to resting places;
- g) sale, offering for sale, exchange, donation, or transport for sale of specimens;
- h) import and export of specimens;
- i) deliberate disturbance;
- j) photographing, filming, or observing that could result in disturbance;
- k) deliberate removal of specimens from locations where they regularly occur to other places;
- l) deliberate introduction to the environment.

In cases where no alternative solution exists and it is not detrimental to the favourable conservation status of wild wolf populations, derogations to the abovementioned prohibitions may be introduced concerning:

- a) capturing stray wolves in built-up areas and moving them to locations where they regularly occur;
- b) capturing injured or weakened wolves to provide them with veterinary help and moving them to animal rehabilitation centres;
- c) restricting serious damage to livestock;
- d) keeping, holding, selling, offering for sale, exchanging, donating and exporting of specimens taken abroad and imported under authorisation from the General or Regional Director for Environmental Protection.

It follows from the above that the NCA permits the killing or capturing of protected animal species, including wolves. However, Article 54

²⁰ Sabina Nowak, Robert W. Mysłajek, *Rola wilka w lasach*, (Godziszka, 2004), p. 2.

of the NCA, inspired by EU and international law, lists the prohibited means, arrangements, and methods for capturing or killing protected wild animals²¹.

The General Director for Environmental Protection (hereinafter 'GDEP') may authorise activities towards the wolf that are contrary to specifically prescribed prohibitions as the wolf is under strict conservation. Also, the Regional Director for Environmental Protection (hereinafter 'RDEP') may, within their territory, authorise activities towards the wolf that are otherwise specifically prohibited. Within the territory of national parks, in turn, authorisation for all activities towards the wolf prohibited by Article 52 paragraph 1 and 1a of the NCA may be given by the Minister with responsibility for the environment after consulting the director of the national park.

The aforementioned authorisations may be given in cases where no alternative solutions exist if they are not detrimental to the favourable conservation status of wild wolf populations and they:

- a) are in the interest of the protection of wild animal species or habitats, or
- b) result from the need to restrict serious damage to livestock, or
- c) are in the interest of general health and safety, or
- d) are necessary for research purposes, educational activities or in connection with recovery of population, reintroduction of animal species, or for reproductive purposes, or
- e) make it possible, in strictly supervised conditions, on a selective basis and to a limited extent, to capture, collect or keep the number of wolf specimen established by the permit issuing authority, or
- f) result from, in the case of species under strict conservation and species listed in Annex IV to the Habitats Directive, reasons of overriding public interest, including those of a social or economic nature or connected with beneficial consequences of primary importance for the environment.

²¹ Wojciech Radecki, *Prawna ochrona przyrody w Polsce, Czechach i Słowacji. Studium prawnoporównawcze*, (Wolters Kluwer Bussines, Warszawa, 2010), p. 209.

Actions subject to prohibitions regarding import and export of wolves may be authorised if those actions are not detrimental to the favourable conservation status of wild wolf populations.

The permission mentioned above is undoubtedly an administrative decision within the category of discretionary decisions. This means that the competent public authorities are not obliged to grant such permission²². However, the decision to grant such permission may be influenced by the significant administrative law *acquis*²³, as well as extensive judicature, in particular, the Supreme Administrative Court ruling of 11 June 1981²⁴. The scope of discretion of public administrative bodies under substantive law is now limited by the general principles of administrative law. The public administrative body is obliged to resolve the issue in a manner compatible with the legitimate interest of the member of the public if it is not detrimental to the public interest and does not exceed the capacity of the administrative body resulting from the means and powers conferred on it, in accordance with the principle set out in Article 7 of Polish Administrative Procedure Code²⁵.

The administrative proceedings on the decision to grant permission for prohibited actions are opened on a written request that contains information strictly defined in the NCA. They are closed with the decision which, when permission is granted, should contain, inter alia, the name of the species; the number of specimens; the permitted means and methods of capture, trapping or killing; and the time, place and conditions of actions for which the permission is granted. The authorities competent for granting such permissions should control compliance with conditions

²² Wojciech Radecki, *Ustawa o ochronie przyrody. Komentarz*, (Difin, Warszawa, 2012), p. 288.

²³ Małgorzata Jaśkowska, *Uznanie administracyjne a inne formy władzy dyskrecyjnej administracji publicznej*, [in:] Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel (ed.), *System prawa administracyjnego*, (Warszawa, 2010), p. 229 and next.

²⁴ Judgement of Suprema Administrative Court dated 11 June 1981, Ref. No. files SA 820/81, LexPolonica No. 296982. See also: the Judgement of Suprema Administrative Court dated 19 December 1984, Ref. No. files III SA 872/84, LexPolonica No. 296959; the Judgement of Suprema Administrative Court dated 13 February 1997, Ref. No. files V SA 246/96, LexPolonica No. 327088.

²⁵ Consolidated text: *Dziennik Ustaw* [English: *Journal of Laws*] 2016, item 23 as amended.

established in the permission issued by them, and withdraw permission in case of infringement.

In Poland, the only legal method for the elimination of wolves is selective hunting for animals that cause conflict. The Minister for the Environment has exercised his discretion and issued permits to hunt wolves (1 specimen in 2002, 17 in 2003 and 10 in 2004; Ministry of the Environment 2005) because of the damage caused and the risk for human life (it concerns aggressive individuals of wolves population). A relatively large number of the issued licenses (in particular in 2003), may indicate an excessive application of the instrument and thus impact unfavourably the wolf's population in Poland. It must be pointed out though that in practice the performance of the culling allowed was insignificant²⁶. The statistical data for the last five years is similar (from 1 January 2010 to October 2014). In 2012, the GDEP issued two permits for hunting four specimen on the grounds of damage to livestock, but only one wolf was killed. In 2010, 2011, 2013, and up to October 2014 such permits were not issued (source: data obtained from The General Directorate for Environmental Protection). It must be thus emphasized that applying this departure from standard has been exceptional. However, permits for holding and keeping specimens for educational purposes were issued relatively often (for example, 37 such permits were issued in 2010). As far as conservation of the wolf is concerned, it is not only the prohibitions intended to protect the species that are important, but also their enforcement. Unfortunately, it must be emphasized that while the wolf is listed as a protected species, Polish law in many cases lacks effective mechanisms to enforce this protection. What is more, the problem is not limited to wolves. It also affects all the other protected species. First of all, the Polish legal system does not impose any effective, proportionate, and dissuasive sanctions for the violation of prohibitions concerning the protection of species. In particular, there are no such sanctions in relation to the illegal killing of protected specimens, especially wolves.

²⁶ Sabina Nowak, Robert W. Mysłajek, Henryk Okarma, Wojciech Śmietana, *Analiza dotychczasowych rodzajów i rozmiaru szkód wyrządzanych przez wilki oraz stosowanie metod rozwiązywania sytuacji konfliktowych*, (Kraków, 2005), p. 29.

SUMMARY

Instruments protecting the wolf were introduced to the Polish legal system long before Poland's accession to the EU. Poland is one of the first European countries where the wolf was afforded strict, countrywide, year-round protection. In spite of the fact that Poland's wolf population was excluded from Annex IV of the Habitats Directive and Poland raised a reservation to Annex II of the Bern Convention which lists the animal species under strict protection, the Polish legal system provides advanced protection for the wolf. The wolf's population condition in Poland as compared to its population in other EU Member States may also be considered satisfying (it is pointed out that the strength of wolf's Polish populations is either stable or growing – depending on the population)²⁷. Therefore, it must be considered that Poland assures the “proper condition for protection of the species”, to which it was obliged ratifying the Bern Convention (Attachment III) and also on the grounds of the Habitats Directive (Attachment V). It does not mean however that Polish system of the wolf protection is free from faults, which should be eliminated to further expand the area of wolves habitat and assure the species stability not only in Poland but also in Europe.

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²⁷ Kaczensky et al., *Status, Management and Distribution of Large Carnivores-Bear, Lynx, Wolf and Wolverine—in Europe* (Report to the European Commission, Part 1, Brussels 2012), p. 44 and next.

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