

**PROTECTION OF THE WOLF IN THE INTERNATIONAL
AND EUROPEAN UNION LEGAL SYSTEMS**

*Kamila Sobieraj**
*Piotr Zacharczuk***

ABSTRACT

This publication attempts to present comprehensively the principal legal acts that oblige the EU and all its Member States to secure favourable conservation status of the wolf population, as well as international legal acts regarding that issue. It also emphasizes the obligation to protect the ecological continuity between the places these carnivores inhabit. It should be pointed out that the existing publications on the EU and international wolf protection regulations are limited to the two undoubtedly most important acts: the Bern Convention and the Habitats Directive.

Key words: EU law, protection of the wolf, Habitats Directive, Bern Convention.

INTRODUCTION

Unlike the frequently discussed environmental and social aspects of the conservation of wolf species within the territory of the EU Member

* PhD in Law, an Assistant Professor at the Department of Environmental Law Management, the Faculty of Law, The John Paul II Catholic University of Lublin in Poland.

** PhD in Law, an Assistant Professor at the Department of Public Management and Administrative Law, the Faculty of Law, The John Paul II Catholic University of Lublin in Poland.

States and on the international level, the issue of the legal protection of the wolf is rarely discussed in the literature. This publication attempts to comprehensively present the principal legal acts that oblige the EU and all its Member States to secure favourable conservation status of the wolf population, as well as international legal acts regarding that issue. It also emphasizes the obligation to protect the ecological continuity between the places these carnivores inhabit. It should be pointed out that the existing publications on the EU and international wolf protection regulations are limited to the two undoubtedly most important acts: the Bern Convention¹ and the Habitats Directive².

THE EUROPEAN UNION AND INTERNATIONAL REGULATIONS CONCERNING WOLF PROTECTION

Even though at the international and EU law level there is not a normative act regulating congenerically the fauna species conservation, including the wolf's conservation, there are however regulations providing for legal instruments contributing thereto. The species conservation is, on the other hand, dealt with in the content of a few international agreements. A part of those international acts of law has been, however, ratified by the EU and thus have become a part of the EU law.

In 1982, the Bern Convention³ was ratified by the EU, thereby making it part of EU law. Presently, the Convention imposes binding obligations

¹ Convention on the Conservation of European Wildlife and Natural Habitats concluded in Bern on 19 September 1979, Dziennik Ustaw [English: Journal of Laws] 1996, No. 58, item 264, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>.

² 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.

³ Widely discussed in: Yaffa Epstein, *The Habitats Directive and Bern Convention: Synergy and Dysfunction in Public International and EU Law*, 'The Georgetown International Environmental Law Review' 2014, Volume 26, No. 2, p. 142.

on both the EU and all Member States, which also have independently ratified the Convention.

The wolf was included in Appendix II of the Bern Convention and therefore classified as a strictly protected species. Under the terms of Article 6, all forms of deliberate capture and keeping and deliberate killing, as well as the deliberate damage to or destruction of reproductive or resting sites of the protected species (listed in Appendix II), are forbidden. Furthermore, the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of the Convention, is prohibited. Moreover, the Convention prohibits the possession of and internal trade in the protected animals, dead or alive, including stuffed animals and any readily recognisable part or derivative thereof.

Exceptions from the provisions of Article 6 may be made in the five situations enumerated in Article 9 (1) of the Bern Convention, provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned. Two of the listed situations are practicable for the wolf: the exceptions from the provisions can be allowed to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property; and to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on 3 March 1973 in Washington, D.C.⁴ (hereinafter ‘the Washington Convention’) is another important act concerned with the international legal protection of the wolf. The purpose of this convention is the protection of these species of wild fauna and flora that are threatened with extinction, including, in particular, the wolf (listed in Appendix II). Such protection consists primarily of regulating or restricting trade in these species. The document recognizes that international co-operation is essential for the protection of certain species of wild fauna and flora against exploitation through international trade. There-

⁴ *Dziennik Ustaw* [English: Journal of Laws] 1991, No. 27, item 112 and 113, also available at: <http://www.cites.org/eng/disc/text.php>, accessed on 21 January 2015.

fore, the Washington Convention sets out the regulations of trade in the endangered species of wild fauna and flora.

The EU is not a party to the Washington Convention, and only has observer status at the Conference of the Parties. However, the EU has been taking measures to ensure the performance of the obligations under the Convention by all its Member States since 1982. The act that was adopted in order to enforce all the provisions of the Washington Convention across the EU is the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein⁵. Similar to the Convention, this Regulation includes lists of species covered by the restrictions in Annexes A–D. It also prohibits the use of any specimen listed in Annexes A and B for commercial gain (including sale) across the EU. Those restrictions are relative; exemptions and derogations are provided for. The wolf was listed in Annex A to the Council Regulation (EC) No 338/97⁶.

With the entry into force of the Single European Act in 1986 and the Maastricht Treaty in 1992, the EU acquired greater environmental competences. One of the consequences of that extension was the adoption of the Habitats Directive in order to implement the provisions of the Bern Convention with regard to the “non-avian” species. The Habitats Directive, being an act which implements the legislation recorded in the Bern Convention, has to be interpreted in a manner that is consistent with that convention⁷. However, the doctrine emphasizes the interactions between those two documents and the fact that the impact of the Habitats Directive on the effective implementation of the provisions of the Bern Convention is currently much greater than that of the Convention on the Directive⁸.

The aim of the Habitats Directive is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna

⁵ Official Journal of the European Union No. L 61/1 dated 03.03.1997.

⁶ Henryk Okarma, Roman Gula, Piotr Brewczyński, *Program ochrony wilka *Canis lupus* w Polsce. Krajowa strategia ochrony wilka warunkująca trwałość populacji gatunku w Polsce*, Warsaw 2011, pp. 20–21.

⁷ European Commission, Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive 92/43/EEC, Brussels), final version, February 2007, Feb. 2007.

⁸ Yaffa Epstein, *The Habitats Directive...*, pp. 139–173.

and flora in the European territory of the Member States. The Habitats Directive does not define the ways in particular habitats and species should be protected but requires that the measures taken ensure the restoration or maintenance of natural habitats and species of wild fauna and flora at a favourable conservation status, taking account of economic, social, and cultural requirements and regional and local characteristics. The conservation status of a species is taken as favourable when the size of the population secures its position as a long-term component of its natural habitat, the natural range of the species is not being reduced, and a sufficiently large habitat exists to maintain its population⁹.

Under the Habitats Directive, the wolf is a priority species, which in accordance with Article 1(h), should be defined as an endangered and declining species for the conservation of which the Community has particular responsibility in view of the proportion of the wolf's natural range, which falls within the territory of the EU Member States. Moreover, the wolf is a species of the Community's particular attention, as it requires both strict protection (as it was listed in Annex IV) as well as the designation of special conservation areas in order to safeguard its habitats (the wolf was also listed in Annex II).

The provisions of the Habitats Directive include a list of prohibitions similar to that of the Berne Convention. In particular, they prohibit all forms of deliberate capture or killing of the listed species in the wild, deliberate disturbance of these species, as well as the deterioration or destruction of reproductive sites or resting places. In accordance with the case law of the Court of Justice of the EU (the CJEU), "the transposition of Article 12 (1) of the Directive requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures"¹⁰ and "the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive

⁹ European Commission, Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive 92/43/EEC.

¹⁰ Judgment of the Court (Second Chamber) of 11 January 2007 in Case-183/05 Commission of the European Communities v Ireland, paragraph 29, available at <http://curia.europa.eu>.

nature¹¹. The CJEU and the Commission recommend the adoption of species-specific action plans and their proper implementation, which is an effective measure for the implementation of the provisions of Article 12. Without such instruments, the system of strict protection contains gaps and is viewed by the Commission and the CJEU as infringing the provisions of the Habitats Directive¹².

The Member States have also been obliged to establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV. Moreover, for the species under strict protection, the Member States are to prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before the Directive was implemented.

Article 16 (1) of the Habitats Directive lists five situations, formulated as in the provisions of the Bern Convention (two of which are used in practice to validate the killing of wolves), that allow for derogation from the provisions provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. The CJEU, respecting the purpose of the Habitats Directive, requires a narrow interpretation of the provisions regarding the derogations from the species protection, especially in the case of derogations from strict species protection under Article 16 of the Habitats Directive¹³. If there are any doubts as to the interpretation of those regulations, they should be interpreted in light of the precautionary principle, which enables effective prevention of the adverse effects of those regulations on the

¹¹ Judgment of the Court (Fifth Chamber) of 16 March 2006 in Case-518/04 Commission of the European Communities v Hellenic Republic, paragraph 16, available at <http://curia.europa.eu>.

¹² Judgment of the Court (Fifth Chamber) of 16 March 2006 in Case 518/04 Commission of the European Communities v Hellenic Republic, paragraph 18, available at <http://curia.europa.eu>.

¹³ E.g. Judgment of the Court (Second Chamber) of 20 October 2005 in case C-6/04. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland, paragraph 111, available at <http://curia.europa.eu>.

protected species¹⁴. Although the CJEU clarified certain aspects of Article 16 in a case concerning protection of the wolf in Finland¹⁵, there remain a number of important, unresolved questions in that regard. Bringing before the CJEU the case of inconsistency between Swedish wolf protection policy and EU law, in which the Commission started an infringement proceeding two years ago¹⁶, would contribute to the clarification of those issues, and in particular of Article 16 (1) (e) of the Habitats Directive. Derogations under Article 16 are the most common objects of the proceedings started by the Commission and of the cases concerning the interpretation and implementation of the Habitats Directive brought before the CJEU.

Significantly, the legal doctrine argues that although the obligation of conservation arising from the Habitats Directive is imposed on individual Member States and the Directive does not establish a clear obligation of cooperation, full discretion regarding such cooperation cannot be exercised by the Member States with regard to the populations of protected species. The obligation of transboundary cooperation when it is necessary for maintaining or restoring a favourable conservation status of the priority species should be concluded on the basis of Article 2 and in connection with Articles 12 and 14–16 of the Habitats Directive¹⁷. What is more, the Habitats Directive is an act which implements the Bern Convention, and the obligation of transboundary cooperation arises from Articles 10 and 11 of the Convention which, *inter alia*, requires the parties to cooperate

¹⁴ Judgment of the Court (Grand Chamber) of 7 September 2004 in Case-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, paragraph 58, available at <http://curia.europa.eu>.

¹⁵ Judgment of the Court (Second Chamber) of 14 June 2007 in Case-342/05 *Commission of the European Communities v Republic of Finland*, available at <http://curia.europa.eu>.

¹⁶ Yaffa Epstein and Jan Darpö, *The Wild Has No Words: Environmental NGOs Empowered to Speak for Protected Species as Swedish Courts Apply EU and International Environmental Law*, 'Journal for European Environmental & Planning Law' 2013, Volume 10, issue 3, pp. 250-261.

¹⁷ Arie Trouwborst, *Living with success – and with wolves: addressing the legal issues raised by the unexpected homecoming of a controversial carnivore*, 'European Energy and Environmental Law Review' 2014, volume 23, pp. 89-101.

“whenever appropriate and in particular where this would enhance the effectiveness” of the protective measures¹⁸.

The question of adequate protection of the wolf is connected with the issue of the protection of ecological continuity, which is regulated by both international and EU law. The freedom of movement, which is the basis for the normal functioning of most animal species, needs adequate space to satisfy species’ essential needs.

With increasing amounts of land being claimed by humans for agricultural purposes and urban development, the area of habitats most valuable to wild fauna and flora is being limited, while existing habitats are being divided into small, isolated patches. The existence of species requiring greater living space and freedom of movement in fragmented environments is possible only due to the presence of wildlife corridors, which ensure ecological continuity between suitable habitats and thus provide shelter, access to food and, above all, genetic diversity essential for animal populations. The absence of wildlife corridors is in turn the major factor that limits the natural range of wild species, including the wolf.

The Convention on the Conservation of Migratory Species of Wild Animals signed on 23 June 1979 in Bonn¹⁹ is significant from the perspective of wildlife corridor protection. According to its provisions, the signing parties recognise the need to take those measures, either individually or in cooperation with other countries inhabited by migratory species, necessary to avoid threats to any of the migratory species. This question is also a vital aspect of the provisions of the Bern Convention. Under Article 4 of the convention, the contracting parties undertake to give special attention to the protection of areas important to migratory species (clause 3), as well as coordinate their efforts for the protection of the natural habitats when these are situated in frontier areas (clause 4). The States Parties to the Convention also adopted the *Action plan for the conservation of wolves*

¹⁸ F.M. Fleurke & Arie Trouwborst, *European regional approaches to transboundary protection of biodiversity resources*, in: L. Kotze & T. Marauhn (eds), *Transboundary Governance of Biodiversity*, Martinus Nijhoff Publishers, Leiden/Boston 2014, p. 128 and following pages.

¹⁹ *Dziennik Ustaw* [English: Journal of Laws] 2003, No. 2, item 17. See Article 2 and 3.

in Europe²⁰, which relates to managing wolf populations in cross-border regions and establishes that local strategies and action plans for species protection should be created at the level of every country and every biogeographical region²¹.

On the other hand, at the level of EU law, acts concerning the environmental impact assessment require paying attention to (i.e. The European Parliament and Council Directive 2001/42/EC dated 27 June 2001 on assessment of the impact of some plans and programs upon the environment²² and The European Parliament and Council Directive 2011/92/EU dated 13 December 2011 regarding the assessment of environmental impact exerted by some public and private undertakings²³), and also with respect to nature conservation (mainly the Habitats Directive)²⁴.

SUMMARY

Many legal instruments, including EU legislation and international conventions ratified by the EU, impose a strict obligation on EU Member States to secure a favourable status of wolf populations within their territories. In majority, those agreements contain a generally formulated

²⁰ Action Plan for the conservation of the wolves (*Canis lupus*) in Europe, T-PVS (2000) 23, document available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1391866&SecMode=1&DocId=1459484&Usage=2>. See also Luigi Boitani, *Action plan for the conservation of wolves in Europe*, 'Nature and Environment' (Council of Europe Publishing, 2000), No. 113, p. 22.

²¹ Henryk Okarma, Roman Gula, Piotr Brewczyński, *Program ochrony wilka...*, p. 5.

²² Official Journal of the European Union No. L 197/30 dated 21.7.2001.

²³ Official Journal of the European Union No. L 26/1 dated 28.1.2012, amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Official Journal of the European Union No. L 124/1 dated 25.4.2014.

²⁴ Marcin Pchalek, *Prawne aspekty ochrony zwierząt przed wpływem infrastruktury drogowej i kolejowej* [in:] Włodzimierz Jędrzejewski, Dorota Ławreszuk (ed.), *Ochrona łączności ekologicznej w Polsce*, (Mammal Research Institute, Polish Academy of Science, Białowieża. 2009), pp. 261-262.

obligations of the states - parties and they are not appropriate for direct application. Even though they shape the national regulations of the states - parties, their actual effectiveness depends on the way they are implemented into the national law.

Furthermore, the Bern Convention as well as the Habitats Directive provide for the possibility to make reservations by the states - parties of the Convention / EU Member States to the regulations of that legal acts. Reservations both to the Bern Convention and the Habitats Directive have been made by many states²⁵, which undoubtedly contributes to lower effectiveness of those documents, the meaning of international and EU regulations has diminished. 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. 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.

REFERENCES

- Boitani Luigi, *Action plan for the conservation of wolves in Europe*, 'Nature and Environment' (Council of Europe Publishing, 2000), No. 113.
- Fleurke F.M. & Arie Trouwborst, *European regional approaches to transboundary protection of biodiversity resources*, in: L. Kotze & T. Marauhn (eds), *Transboundary Governance of Biodiversity*, Martinus Nijhoff Publishers, Leiden/ Boston 2014.

²⁵ Petra Kaczensky *et al.*, *Status, Management and Distribution of Large Carnivores—Bear, Lynx, Wolf and Wolverine—in Europe* (Report to the European Commission, Part 2, Brussels 2013), 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:] 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. 49.

- Kaczynski Petra *et al.*, *Status, Management and Distribution of Large Carnivores—Bear, Lynx, Wolf and Wolverine—in Europe*, Report to the European Commission, Part 2, Brussels 2013.
- Linnell John, 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.
- Okarma Henryk, Roman Gula, Piotr Brewczyński, *Program ochrony wilka *Canis lupus* w Polsce. Krajowa strategia ochrony wilka warunkująca trwałość populacji gatunku w Polsce*, Warsaw 2011.
- Pchałek Marcin, *Prawne aspekty ochrony zwierząt przed wpływem infrastruktury drogowej i kolejowej* [in:] Włodzimierz Jędrzejewski, Dorota Ławreszuk (ed.), *Ochrona łączności ekologicznej w Polsce*, Mammal Research Institute, Polish Academy of Science, Białowieża. 2009.
- Trouwborst Arie, *Living with success – and with wolves: addressing the legal issues raised by the unexpected homecoming of a controversial carnivore*, 'European Energy and Environmental Law Review' 2014, volume 23, pp. 89-101.
- Epstein Yaffa, *The Habitats Directive and Bern Convention: Synergy and Dysfunction in Public International and EU Law*, 'The Georgetown International Environmental Law Review' 2014, Volume 26, No. 2.
- Epstein Yaffa and Jan Darpö, *The Wild Has No Words: Environmental NGOs Empowered to Speak for Protected Species as Swedish Courts Apply EU and International Environmental Law*, 'Journal for European Environmental & Planning Law' 2013, Volume 10, issue 3.

