

Decision

on the time taken by the European Commission to bring to conclusion an infringement investigation about wolf hunting in Sweden (163/2023/PB)

The case concerned the time that the European Commission is taking to handle an infringement investigation about wolf hunting in Sweden. The investigation began in 2010.

The Ombudsman's inquiry showed that the Commission was still actively investigating, and that it was a reasonable assumption that the next stage in the Commission's investigation could take place by the end of 2023.

The Ombudsman therefore concluded that no further inquiries were justified, and closed the case.

Background to the complaint

1. The complainant was concerned that the European Commission has not yet concluded an ongoing infringement investigation about Swedish legislation and practices that allegedly breach the EU's Habitats Directive by allowing for unauthorised and excessive killing of wolves.
2. The Commission launched the infringement procedure in 2010 (INFR(2010)4200¹). In 2011, it issued a formal notice to Sweden, later that year a reasoned opinion and, in 2015, an additional reasoned opinion.
3. The complainant turned to the Commission after it had already started its infringement investigation. The Commission rejected the two complaints that the complainant made on the matter (the last one early 2023), stating that it is continuing to monitor the issue.
4. The Ombudsman opened an inquiry into the complainant's concern that the Commission is failing to take action to bring to conclusion an infringement investigation about wolf hunting in Sweden (infringement proceedings INFR(2010)4200).
5. The Ombudsman inquiry team met with representatives of the Commission to gather information on the matter.

¹ The infringement case and its history can be searched here: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/screen/home?lang_code=en



6. The Commission's representatives gave information on how they have been handling the matter so far. It stated that experience allows for the reasonable assumption that the next stage in the infringement procedure could take place by the end of 2023, depending on the factual, legal and political events that take place over the coming months. An extract from the meeting report is annexed to this decision.

7. The Ombudsman sent the meeting report to the complainant, who did not submit comments.

The Ombudsman's assessment

8. The infringement procedure at issue is one of numerous environment related infringement procedures that have been open for several years, according to the Commission's online database.² While the Commission has wide discretion in how it handles infringement matters, where infringement procedures take a considerable amount of time - in this case, more than ten years - this must be examined in the context of whether the Commission has continued to work on the case, or whether there have been long periods of inactivity (several months).

9. The handling time in this case, although very long, does not appear to be characterised by a lack of attention to the EU law issues it raises or a lack of strategic approach to the resolution of those issues.

10. It nonetheless goes without saying that in infringement cases of such very long duration, principles of good administration require that the handling of the case should be particularly diligent. Long periods of inactivity (several months) should be avoided.

11. In this case, the Commission, has informed the Ombudsman that, whilst no date has been fixed for the next step in the case, there is a reasonable assumption that the next stage could take place by the end of 2023.

12. In light of this, the Ombudsman considers that no further inquiries are justified at this stage.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion³:

No further inquiries are justified at this stage.

The complainant and the European Commission will be informed of this decision.

² The database shows 85 open cases dating from 1998-2015.

³ This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions](#)



A handwritten signature in black ink, appearing to read 'Tina Nilsson'.

Tina Nilsson
Head of the Case-handling Unit

Strasbourg, 24/07/2023



ANNEX

EXTRACT FROM REPORT ON THE MEETING OF THE EUROPEAN OMBUDSMAN INQUIRY TEAM WITH REPRESENTATIVES OF THE EUROPEAN COMMISSION

Purpose of the meeting

The Ombudsman's inquiry concerns the Commission's infringement proceedings in case [INFR\(2010\)4200](#). As part of the relevant proceedings, a fact-finding investigation has been carried out by the Commission services.

The main purpose of the meeting was for the Ombudsman inquiry team to gather information on what steps have been taken since 2015 in those infringement proceedings, following the Commission's second reasoned opinion, and on what steps are in the pipeline.

Information provided

Context:

The Commission said that the infringement proceedings here in question are based on a complaint submitted by four Swedish non-governmental organisations, not the Danish organisation that complained to the Ombudsman. It is the Commission's understanding that the non-governmental organisations would like it to bring legal proceedings against Sweden before the EU Court of Justice in Luxembourg.

The Commission stressed that, in line with long-standing case-law, it enjoys discretionary powers as to whether and when to bring infringement proceedings against a Member State.

The Commission moreover pointed to the fact that wolf hunting elicits strong views and emotions among some interest groups.

The Commission referred to the factual and legal developments which have impacted the case.

The events and measures since 2015:

Sweden has made changes to the licencing scheme for wolf hunting since 2015. Following a judgment by the Swedish Supreme Administrative Court and by subsequent amendments to the Hunting Ordinance as of 1 April 2016, full access to justice is ensured for hunting decisions taken by the county administrative boards on licensed hunting. Those decisions can be challenged before the courts by way of 'access to justice'



as per the principles under the Aarhus Regulation as implemented in Sweden⁴, including by non-governmental organisations.

This new situation raised the possibility of more effective judicial review of license hunting decisions in light of EU environmental law in the national courts. Several licensing decisions were challenged before the courts. In December 2016, the Swedish Supreme Administrative Court upheld a licensing decision, and did so without referring a question to the EU Court for preliminary ruling.

Following this, the Finnish Supreme Administrative Court, in November 2017, sent a request for preliminary ruling to the EU Court in Luxembourg. The request concerned a licensing scheme that was very similar to the Swedish one. It was therefore to be expected that the EU Court would clarify key issues as regards the interpretation of Article 16 of the Habitats Directive (regarding derogations from the obligation to protect certain species), which is the provision at stake in the case concerning Sweden. The EU Court gave judgment in October 2019 (the 'Tapiola judgment'). An essential aspect of the judgment was that the 'precautionary principle' shall normally be applied when there is scientific uncertainty in relation to the management of wolves.⁵

Furthermore, in 2019 and 2020, no hunting licences were issued. The Commission saw this as a possible sign that Sweden intended to discontinue the practices that the Commission considered inconsistent with the applicable EU rules. The cessation of this practice could lead to the closure of the infringement case (according to the case-law, the reference date for verifying compliance is the period after the reasoned opinion).

However, in September 2020, Swedish County Administrative boards again licenced hunting decisions for hunting in 2021. Hunting has also been carried out similarly in 2022 and 2023 (typically with decisions adopted in September and allowing hunting in January and February).

In September 2022, an Austrian court made a request for a preliminary ruling to the EU Court, which raised issues related to EU law and wolf hunting.⁶ The Commission might consider it important to know the EU Court's preliminary ruling before reaching its own final assessment in the infringement investigation here in question.

The Commission pointed out that in 2021, it issued a guidance document on the strict protection of animal species under the Habitats Directive, including a dedicated Annex on the wolf.⁷

The next step:

⁴ See for instance <https://www.naturvardsverket.se/en/environmental-work/international-cooperation/conventions/aarhus-convention/>, and https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf#page=188

⁵ Judgment of the Court (Second Chamber) of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry v Risto Mustonen and Others*, Request for a preliminary ruling from the Korkein hallinto-oikeus. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0674>, see paragraph 66 of the judgment.

⁶ See Request for a preliminary ruling from the Landesverwaltungsgericht Tirol (Austria) lodged on 19 September 2022 — *Umweltverband WWF Österreich and Others v Tiroler Landesregierung* (Case C-601/22), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CN0601> - questions on page 2.

⁷ https://environment.ec.europa.eu/news/habitats-directive-new-guidance-protected-species-2021-10-12_en



The Commission emphasised that since 2015, it has continued to closely monitor the situation and has had exchanges with the Swedish authorities on technical and legal matters. The Commission recalled that, in the context of the infringement procedure, the Commission bears the burden of proof of the alleged infringement and may not rely on any presumption for that purpose.

In terms of any next decision on the infringement procedure, the Commission has not fixed a date. However, experience allows for the reasonable assumption that the next stage⁸ could take place by the end of 2023, depending on the factual, legal and political events that take place over the coming months.

END OF ANNEX

⁸ In an infringement case, the next stage after a reasoned opinion is (a) another reasoned opinion; (b) referral to court under Article 258 TFEU; or (c) closure.