



Reports of Cases

Case C-601/22

**Umweltverband WWF Österreich
and
ÖKOBÜRO – Allianz der Umweltbewegung
and
Naturschutzbund Österreich
and
Umweltdachverband
and
Wiener Tierschutzverein
v
Tiroler Landesregierung**

(Request for a preliminary ruling from the Landesverwaltungsgericht Tirol)

Judgment of the Court (First Chamber) of 11 July 2024

(Reference for a preliminary ruling – Validity and interpretation – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – Article 12(1) – System of strict protection for animal species – Annex IV – *Canis lupus* (wolf) – Equal treatment between Member States – Article 16(1) – National authorisation to take a specimen of a wild animal of the *canis lupus* species – Evaluation of the conservation status of populations of the species concerned – Geographical scope – Determination of the damage – Satisfactory alternative solution)

1. *Environment – Conservation of natural habitats and of wild fauna and flora – Directive 92/43 – Strict protection for the animal species listed in Annex IV(a) – Strict protection for canis lupus – Exclusion of the populations of wolves situated on the territory of certain Member States listed in that annex – Population of wolves in Austria not coming within that exclusion – Validity with regard to the principle of equal treatment between Member States (Art. 4(2) TEU; Council Directive 92/43, Art. 12(1) and Annex IV)*

(see paragraphs 32-39, 42-46, operative part 1)

2. *Questions referred for a preliminary ruling – Assessment of validity – Request seeking a declaration that an EU institution has failed to act – Not permissible (Arts 265 and 267 TFEU)*

(see paragraph 41)

3. *Environment – Conservation of natural habitats and of wild fauna and flora – Directive 92/43 – Strict protection of the animal species listed in Annex IV(a) – Derogations – Conditions – Maintenance of the populations of the species concerned at a favourable conservation status – Evaluation of the conservation status of populations of the species concerned – Account taken at local and national level, and, where applicable, cross-border level*

(Art. 191(2) TFEU; Council Directive 92/43, Arts 1(i), 12 to 14, 15(a) and (b) and 16(1))

(see paragraphs 49-66, operative part 2)

4. *Environment – Conservation of natural habitats and of wild fauna and flora – Directive 92/43 – Strict protection of the animal species listed in Annex IV(a) – Derogations – Prevention of serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property – Concept of serious damage – Indirect future economic loss, not attributable to the specimen of the animal species covered by the derogation – Not included (Council Directive 92/43, Arts 12 and 16(1)(b) and Annex IV(a))*

(see paragraphs 69-75, operative part 3)

5. *Environment – Conservation of natural habitats and of wild fauna and flora – Directive 92/43 – Strict protection of the animal species listed in Annex IV(a) – Derogations – Conditions – No satisfactory alternative solution – Assessment by the competent national authorities – Account taken of the economic implications of the possible solution – Limits – Balancing with the general objective of maintaining or restoring the animal species concerned at a favourable conservation status (Council Directive 92/43, Arts 2(3), 12 and 16(1))*

(see paragraphs 78-86, operative part 4)

Résumé

Ruling on a reference for a preliminary ruling from the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), the Court of Justice, first, confirms the validity of Article 12 of, and Annex IV to, the Habitats Directive,¹ which establish a system of strict protection for certain animal species, and, second, specifies the conditions for the application of the derogation scheme from that protection, as provided for in Article 16 of that directive.

In 2022, a wild animal specimen belonging to the *canis lupus* (wolf) species was found to be the cause of several sheep attacks in the Province of Tyrol. Taking the view that that wolf represented an imminent significant danger to grazing animals and agricultural crops, the Tiroler Landesregierung (Provincial Government of Tyrol, Austria) accordingly authorised the removal of that wolf, by excluding it from the strict protection enjoyed by that animal species under Article 12 of, and Annex IV to, the Habitats Directive.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the Habitats Directive').

In that context, several animal and environmental protection organisations brought an action before the referring court, claiming that the removal decision did not satisfy the conditions for derogation laid down in Article 16 of that directive.

Taking the view that the wolf population in Austria has developed since the entry into force of the Habitats Directive, that court is uncertain, first, as to the validity of Article 12(1) of that directive, read in conjunction with Annex IV thereto, in the light of the principle of equal treatment between Member States, in so far as that annex excludes certain wolf populations situated on the territory of other Member States from the system of strict protection established in Article 12 of that directive, but does not exclude the wolf population in Austria. Second, the referring court also raises the question of the conditions for granting a derogation from that strict protection under Article 16 of that directive.

Findings of the Court

In the first place, the Court recalls that the validity of an EU act must be assessed in the light of the information available to the EU legislature on the date of adoption of the legislation at issue. In the present case, at the time of its accession to the European Union on 1 January 1995, the Republic of Austria did not make any reservation as regards the inclusion in Annex IV to the Habitats Directive of the wolf population present in its territory, nor did it adduce any evidence to show that it was in a situation comparable to that of the other Member States whose wolf population was, on the same date, excluded from the system of strict protection.

Furthermore, the favourable development of the wolf population on Austrian territory since that accession corresponds precisely to one of the objectives pursued by the Habitats Directive and may be taken into consideration in order to adapt that complex technical framework which is evolving in nature. In that regard, although the Habitats Directive permits the adaptation of Annex IV to that directive to technical and scientific progress² and even if the EU legislature was required to do so in order to remove the wolf population in Austria from the system of strict protection, any failure by that legislature to act cannot constitute, in the context of the preliminary ruling mechanism, a ground for invalidity of Article 12 of that directive, read in conjunction with Annex IV thereto.

In any event, wolves are subject to strict protection under the Berne Convention on the Conservation of European Wildlife and Natural Habitats,³ to which the European Union is a party and which binds it under international law. Furthermore, in so far as the Habitats Directive seeks to ensure the restoration and maintenance of natural habitats and species of wild fauna and flora at a favourable conservation status, the protection provided for in Article 12 of that directive applies even to species which have achieved such a conservation status, which must be protected against any deterioration of that status.

In the light of those considerations, the Court concludes that there are no factors capable of affecting the validity of Article 12(1) of the Habitats Directive, read in conjunction with Annex IV thereto.

² Article 19 of the Habitats Directive.

³ Convention on the Conservation of European Wildlife and Natural Habitats, signed on 19 September 1979 in Berne (OJ 1982 L 38, p. 3).

In the second place, as regards the conditions for granting a derogation from the system of strict protection established by the Habitats Directive, the Court recalls, first of all, that Article 16(1) of that directive allows Member States to derogate from those conditions provided that that derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

In that regard, it is for the competent national authority to determine, as a first step, the conservation status of the populations of the species at issue, and, as a second step, the impact that derogation is capable of having on them. The evaluation carried out in the context of those two steps must be done, first, and necessarily, at local and national level, where the consequences of the derogation are generally felt most directly. It is only when the conservation status of the animal species concerned is favourable at local and national level that the assessment may, second, if the available data allow, be considered at cross-border level.

Next, Article 16(1)(b) of the Habitats Directive allows for derogations in order to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property. Although that provision does not require the occurrence of serious damage prior to the adoption of derogating measures, that damage cannot be purely hypothetical and must, be at least largely attributable to the animal species targeted by the derogation. It follows that, in view of the causal link which must exist between, on the one hand, the grant of the derogation and, on the other hand, the damage caused by that animal species, the concept of ‘serious damage’ within the meaning of that provision does not cover future indirect damage which is not attributable to the specimen of the animal species concerned.

Finally, a derogation under Article 16 of the Habitats Directive presupposes that there is no other satisfactory solution enabling the objectives relied on in support of the derogation to be achieved. That condition, which is a specific expression of the principle of proportionality, thus requires a balance to be struck between all the interests involved and the criteria to be taken into consideration, such as the ecological, economic and social advantages and disadvantages involved. To that end, the competent national authorities must examine the possibility of using non-lethal preventive means consisting, inter alia, in the implementation of preventive measures in respect of herds and the adoption of measures designed to adapt, where possible, the human practices giving rise to the conflicts, in order to promote a culture of coexistence between the wolf population, herds and breeders.

When determining a satisfactory alternative, those authorities are required to assess, on the basis of the best available scientific and technical knowledge, other possible solutions, taking account, in particular, of their economic implications, without those implications being decisive, and balancing them with the general objective of maintaining or restoring the animal species concerned at a favourable conservation status.