

JUDGMENT OF THE COURT (Second Chamber)

14 June 2007^{*}

In Case C-342/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on
14 September 2005,

Commission of the European Communities, represented by M. van Beek and
I. Koskinen, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Finland, represented by E. Bygglin, acting as Agent, with an address for
service in Luxembourg,

defendant,

^{*} Language of the case: Finnish.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann, J. Makarczyk, L. Bay Larsen (Rapporteur) and J.-C. Bonichot, Judges,

Advocate General: J. Kokott,

Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2006,

gives the following

Judgment

- ¹ By its application, the Commission of the European Communities seeks a declaration that, by authorising wolf hunting in breach of the grounds of derogation laid down in Article 16(1) of 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'), the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1) of that directive.

Legislative background

The Habitats Directive

- 2 Under Article 12(1) of the Habitats Directive:

‘Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;

...’.

- 3 Annex IV to the Habitats Directive is entitled ‘Animal and Plant Species of Community Interest in Need of Strict Protection’. Annex IV(a), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) (‘Annex IV(a)’), mentions the following species: ‘Canis lupus (except the ... Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management)’.

4 Article 16(1) of the Habitats Directive states:

‘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, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

...

5 The conservation status of species is defined in Article 1(i) of the Habitats Directive:

‘(i) *conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The *conservation status* will be taken as “favourable” when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis’.

Finnish law

- 6 It is clear from the documents before the Court that Articles 12 and 16 of the Habitats Directive have been transposed in substantially identical terms in the Finnish legislation on hunting.
- 7 However, there are specific regulations as regards authorisation to kill wolves. Wolf hunting is authorised on a case-by-case basis by the competent game management district. On the other hand, the upper regional limits, that is to say the maximum number of wolves which may be hunted in each district during the hunting season from 1 November until 31 March, are set by the Ministry of Agriculture and Forestry. The limits are set so that the wolf population is not threatened in those districts. All information on mortality is taken into account, particularly mortality resulting from road accidents and human activities.
- 8 In order to authorise hunting the game management districts must consider whether the conditions set out in Article 16(1) of the Habitats Directive, which has been transposed into national law, are satisfied. Furthermore, where an upper regional limit has been reached it may be exceeded only if the conditions laid down in Article 16(1) are complied with and a special ministerial authorisation is granted.
- 9 Moreover, although the police may kill animals in exceptional circumstances, they may only do so if the conditions set out in paragraph 8 of this judgment are respected.

The pre-litigation procedure

- 10 The Commission initiated the procedure for failure to fulfil obligations by sending the Republic of Finland a letter of formal notice on 10 April 2001. After that Member State had responded, by a letter of 6 July 2001, the Commission issued a reasoned opinion on 26 June 2002. In that opinion the Commission stated that since (i) the conservation status of the wolf was not favourable in Finland, (ii) alternative approaches could be employed and (iii) hunting permits were issued without any relationship to the particular wolves causing serious damage being established, wolf hunting as authorised did not satisfy the conditions laid down in Article 16(1) of the Habitats Directive. The Republic of Finland responded to the reasoned opinion by a letter of 28 August 2002.
- 11 However, taking the view that the failure to fulfil obligations complained of persisted, the Commission brought the present action on 14 September 2005.

The action

Arguments of the parties

- 12 The Commission states, first of all, that in Finland the wolf is an endangered species and, consequently, its conservation status cannot be regarded as favourable in that Member State.
- 13 Next, the Commission submits that the practice in Finland consisting in authorising hunting as a preventive measure is contrary to Article 16(1) of the Habitats

Directive. Where it is thought highly likely that a wolf will cause serious damage, the latter may generally be avoided by means other than preventive killing. The use of repellents, scents, electric or other fences, the confinement of cattle or dogs at night or even compensation for damage sustained could be considered. Where hunting permits are issued on preventive grounds, it is highly unlikely that the wolves killed are those which cause the serious damage. In any event, those permits are issued by the Finnish authorities without any relationship with the particular wolves causing such damage being duly established. In those circumstances hunting is not a very effective means to prevent such damage.

- 14 Finally, the Commission states that the annual regional quotas set in advance by the Ministry of Agriculture and Forestry for a specific period are not justified, since derogations from the system of strict protection must be assessed regardless of the period concerned and be considered separately with respect to each hunting permit, in accordance with Article 16(1) of the Habitats Directive. Furthermore, the practice of the Finnish authorities leads to a situation in which wolves may be legally killed even though the maximum limit set by the Ministry of Agriculture and Forestry has been exceeded substantially. Thus, in the 2003-04 season in particular, although the maximum limit had been fixed at eight wolves, in addition eleven derogatory permits were issued and two permits were issued by the police. Ultimately, twelve wolves were killed during that season.

- 15 The Commission concludes that since the conservation status of the wolf in Finland is not favourable, alternative approaches may be employed and the hunting permits are issued without any relationship to the particular wolves causing serious damage being properly established, wolf hunting is authorised in Finland to an extent which infringes the conditions laid down in Article 16(1) of the Habitats Directive.

- 16 The Finnish Government argues that wolf hunting requires a permit, which may be obtained by written request to the local game management district stating the reasons for the request and the territory and number of animals concerned. The local game management district, having the appropriate information relating to its area, examines whether hunting impedes the maintenance of the species at a favourable conservation level, whether it is possible to find another satisfactory solution, and whether the conditions for derogation laid down in Article 16(1) of the Habitats Directive have been satisfied.
- 17 Furthermore, decisions to issue hunting permits are also taken with regard to an upper regional limit of specimens that may be hunted in each game management district, which is set by the Ministry of Agriculture and Forestry and corresponds to the number of specimens which may biologically be removed without the populations being endangered. It is not, therefore, a quota which must be attained or exhausted.
- 18 The Finnish Government submits that its practice does not prevent the maintenance in Finland of a favourable conservation status of the wolf population. That population has increased considerably in recent years. The same is true for the geographic population area. Moreover, the dynamics data on the species concerned indicates that it is likely to maintain itself on a long-term basis as a viable component of its natural habitats.
- 19 As regards the condition that there is 'no satisfactory alternative', the Finnish Government contends that many different means are used as far as possible, either alone or in combination, in order to prevent or reduce the damage caused by wolves. In any event, the game management districts consider all satisfactory alternatives before issuing a hunting permit. In that connection, the Finnish Government stresses the fact that the alternatives to which the Commission refers in the present case are not appropriate to each individual instance.

- 20 According to the Finnish Government, and contrary to the Commission's submissions, Article 16(1) of the Habitats Directive does not prohibit derogations from the system of strict protection in order to prevent serious damage. Further, it is not the case that the decisions by which the competent national authorities issue wolf hunting permits do not identify the wolves which cause serious damage. The decisions precisely determine the geographical areas covered by the permits where wolves causing such damage are present. However, since wolves live in packs the hunting permit cannot always identify the specimen(s) causing the damage. Nevertheless, where the particular wolves in question belonging to the pack are known, they are the subject of the hunting permit issued. Furthermore, where the animal concerned moves about alone, the hunting permit may also refer to it individually.

Findings of the Court

- 21 As the Advocate General rightly observes in point 16 of her Opinion, in this case the Commission does not challenge either Finnish legislation or a specific case of killing wolves, but criticises the administrative practice of the Finnish authorities regarding wolf hunting.
- 22 A failure to fulfil obligations may arise due to the existence of an administrative practice which infringes Community law, even if the applicable national legislation itself complies with that law (see Case C-441/02 *Commission v Germany* [2006] ECR I-3449, paragraph 47).

23 It is clear from established case-law that in an action for failure to fulfil obligations it is for the Commission to prove the existence of the alleged infringement. It is the Commission which must provide the Court with the information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose (see, inter alia, Case C-434/01 *Commission v United Kingdom* [2003] ECR I-13239, paragraph 21, and *Commission v Germany*, paragraph 48).

24 Thus, in the context of this action, it is incumbent upon the Commission to prove that the practice followed in Finland adversely affects the system, laid down by Article 12(1) of the Habitats Directive, providing strict protection for the wolf as a species listed in Annex IV(a), on the ground that derogations from that system are not granted in compliance with the conditions laid down in Article 16(1) of the directive (see, to that effect, *Commission v United Kingdom*, paragraph 22).

25 Since the latter provision provides for exceptional arrangements which must be interpreted strictly and must impose on the authority taking the decision the burden of proving that the necessary conditions are present for each derogation, the Member States are required to ensure that all action affecting the protected species is authorised only on the basis of decisions containing a clear and sufficient statement of reasons which refers to the reasons, conditions and requirements laid down in Article 16(1) of the Habitats Directive (see, to that effect, Case C-60/05 *WWF Italia and Others* [2006] ECR I-5083, paragraph 34).

26 In this case it is common ground that:

- the Finnish authorities authorise wolf hunting each year, to a limited extent, by way of derogation;

- according to the report on the threat to species in Finland in 2000, published in 2001 by the Ministry of the Environment and the Finnish Environment Centre (Pertti Rassi, Aulikki Alanen, Tiina Kanerva ja Ilpo Mannerkoski: (toim.): Suomen lajien uhanalaisuus 2000. Uhanalaisten lajien II seurantaryhmä. Ympäristöministeriö & Suomen ympäristökeskus, Helsinki 2001), the wolf is classified as an endangered species in Finland;

- in that report, it is stated that the number of wolves capable of reproducing is less than 50, a figure which is the limit below which an acute danger of extinction exists;

- according to point 7.2 of the Management Plan for the Wolf Population, published in 2005 by the Ministry of Agriculture and Forestry ('the management plan'), it can be estimated that Finland requires 20 breeding pairs in order to ensure the maintenance in the long term of a wolf population as a viable component of its natural habitats;

- as regards 2001, 2002, 2003 and 2004, the number of breeding pairs was estimated, according to point 2.1.5 of the management plan, at 11, 12, 13 and 16 respectively.

²⁷ It appears therefore, having regard to the criterion laid down in the first indent of Article 1(i) of the Habitats Directive, that at the end of the period set in the reasoned opinion the conservation status of the wolf in Finland was not favourable.

- 28 Article 16(1) of the directive makes the favourable conservation status of the populations of the species concerned in their natural range a necessary precondition in order for the derogations for which it provides to be granted (see Case C-508/04 *Commission v Austria* [2007] ECR I-3787, paragraph 115).
- 29 None the less, the grant of such derogations remains possible by way of exception where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration at a favourable conservation status. Following the example of the views formulated by the Commission, in particular in paragraphs 47 to 51 of Section III of its Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (final version, February 2007), it is possible that the killing of a limited number of specimens may have no effect on the objective envisaged in Article 16(1) of the Habitats Directive, which consists in maintaining the wolf population at a favourable conservation status in its natural range. Such a derogation would therefore be neutral for the species concerned.
- 30 It is clear from two decisions to issue wolf hunting permits, which were taken by the Finnish authorities before the Commission sent the letter of formal notice to the Republic of Finland and were produced before the Court by the Commission, that in both those cases the authorities permitted the hunting of a fixed number of wolves in a well defined geographical area, but without relying on an assessment of the conservation status of the species, without providing a clear and sufficient statement of reasons as to the absence of a satisfactory alternative and without specifically identifying the wolves causing serious damage which could be killed.
- 31 Such decisions, which are not based on an assessment of the effect of the killing of the wolves that they authorise on the maintenance at a favourable conservation

status of the population of that species in its natural range, and which do not contain a clear and sufficient statement of reasons as to the absence of a satisfactory alternative, are contrary to Article 16(1) of the Habitats Directive.

32 However, as is clear from paragraph 21 of this judgment, by this action the Commission does not seek to complain of specific cases, but criticises the administrative practice of the Finnish authorities regarding wolf hunting.

33 In that connection, the Court has held that, although a State's action consisting in an administrative practice contrary to the requirements of Community law can amount to a failure to fulfil obligations for the purposes of Article 226 EC, that administrative practice must be, to some degree, of a consistent and general nature (see, in particular, *Commission v Germany*, paragraph 50).

34 Furthermore, as is clear from settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, inter alia, Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, paragraph 29).

35 In this case, the Commission has not produced any of the decisions relating to the issuing of wolf hunting permits that the Finnish authorities have taken after the decisions noted in paragraph 30 of this judgment, with the exception of two decisions in 2006, to which it refers in order to emphasise the progress made in the matter by the Finnish authorities in the meantime.

- 36 Furthermore, the Commission, which in these proceedings has never pleaded a lack of sincere cooperation by the Finnish authorities as regards the communication of decisions relating to the issuing of hunting permits, has not provided the Court with any decision of that kind dating from the period corresponding to the end of the pre-litigation procedure and capable of providing the Court with the evidence necessary to ascertain whether the complaints are well founded.
- 37 Moreover, it must be recalled, as stated in paragraph 26 of this judgment, that the number of breeding pairs rose from 11 to 16 in the period from 2001 to 2004. Nor is it disputed that during the same period the total number of wolves present on Finnish territory rose from between 110 and 130 specimens to between 185 and 200 specimens.
- 38 Although that data is not in itself conclusive, it is in any event capable of showing that, in spite of the wolf hunting authorised by way of derogation in Finland, the conservation status of the species concerned substantially and consistently improved in that Member State during the pre-litigation phase and a significant part of the period before the present action was brought.
- 39 Therefore, the Commission has not adduced sufficient evidence as to the existence of an administrative practice by the Finnish authorities of issuing wolf hunting permits without relying on an assessment of the conservation status of the species or without providing a clear and sufficient statement of reasons as to the absence of a satisfactory alternative.
- 40 As regards the complaint by the Commission relating to the fact that hunting permits are issued on a preventive basis or, in any event, without any relationship

with the particular wolves causing serious damage being duly established, it must be observed, as the Advocate General has also noted in point 29 of her Opinion, that Article 16(1) of the Habitats Directive does not require serious damage to be sustained before derogating measures can be adopted.

41 However, it is the case that the Finnish Government admits that, as the wolf is an animal which generally lives in a pack, hunting permits cannot always target the specimen(s) which cause serious damage.

42 Although it cannot be automatically ruled out that authorising the killing of one or several wolves in a pack certain of whose members cause or are likely to cause such damage may prevent, eliminate or reduce that damage, it must be stated that the information on the file is not capable of confirming that hypothesis.

43 In that regard, as stated in point 5.4.5 of the management plan, certain parties are of the opinion that continued hunting keeps wolves wary of humans and thus helps to reduce damage, while others consider that hunting of wolves which belong to packs only increases damage. Furthermore, it is stated that little biological research on this topic is available.

44 In those circumstances, the Commission's complaint relating to the fact that hunting permits are issued on a preventive basis must be upheld.

- 45 As to the fact that decisions to issue wolf hunting permits are also subject to a maximum regional limit of specimens which may be killed in each game management district, this cannot be regarded as contrary to Article 16(1) of the Habitats Directive. That limit, which is set according to the number of specimens which may be killed without endangering the species in question, is, as the Advocate General has observed in point 33 of her Opinion, only the framework within which the game management districts may issue hunting permits where, in addition, the conditions in Article 16(1) of the Habitats Directive are fulfilled.
- 46 Having regard, in particular to what is stated in paragraph 8 of this judgment, the fact that during the 2003-04 season the limit in question was in fact exceeded cannot in itself be sufficient to prove that the Finnish authorities have issued hunting permits to an extent which may harm the maintenance at a favourable conservation status of wolf populations in their natural range.
- 47 Accordingly, by authorising wolf hunting on a preventive basis, without it being established that the hunting is such as to prevent serious damage within the meaning of Article 16(1)(b) of the Habitats Directive, the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive; the remainder of the Commission's application must be dismissed.

Costs

- 48 Under the first subparagraph of Article 69(3) of the Rules of Procedure, the Court may order that the costs should be shared or that the parties are to bear their own costs where each party succeeds on some and fails on other heads.

- 49 Since both parties have failed in one or several of their claims, they must be ordered to bear their own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Declares that, by authorising wolf hunting on a preventive basis, without it being established that the hunting is such as to prevent serious damage within the meaning of Article 16(1)(b) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive;**
2. **Dismisses the action as to the remainder;**
3. **Orders the Commission of the European Communities and the Republic of Finland to bear their own costs.**

[Signatures]

