

C-88/19

## Alianta pentru combaterea abuzurilor

The strict protection of animal species provided for in the Habitats Directive also extends to specimens that leave their natural habitat and stray into human settlements

# The circumstances of the case

- In 2016, employees of an animal protection association, accompanied by a veterinary surgeon, captured and relocated, without prior authorisation, a wolf which had been present on the property of a resident in a village situated between two major sites that are protected under the Habitats Directive. The relocation of the captured wolf to a nature reserve did not follow the plan and the wolf managed to escape into a nearby forest.

# The criminal procedure

- A criminal complaint was filed in respect of offences associated with the unsafe capture and relocation of a wolf.
- The Prosecutor's Office dismissed the complaint, finding that the conditions of the alleged crimes are not met, given that the wolf was not captured in its natural habitat, but inside a human settlement.

# The criminal procedure

- The local court (Judecătoria Zărnești), in charge of the complaint against the prosecutor's solution, referred a preliminary question: "To what extent the deliberate capture or killing of wild animals of the species *canis lupus* may take place without a derogation based on Article 16 of the Habitats Directive, if these animals are caught in human settlements, or this derogation is mandatory for any wild specimen, whether it is in the wild or in certain local human places?"

# The CJEU decision

## The objectives of the Habitats Directive:

- contribute to the maintenance of biodiversity by conserving the natural habitats and species of wild flora and fauna in the European territory of the Member States.
- require Member States to take the necessary measures to establish a system of strict protection of animal species, "in their natural range", prohibiting all forms of deliberate capture or killing of protected animals "in the wild" (Article 12).

# The CJEU decision

The Habitats Directive has two components:

1. conservation of natural habitats by designating protected sites;
2. conservation of wild fauna and flora by designating protected species.

It includes a strict level of protection for the species mentioned in Annex IV, from which it can be derogated only under the conditions of art. 16.

# The CJEU decision

Under what conditions is the derogation allowed?

- there is no satisfactory alternative;
- not adversely affect the maintenance of the populations of those species at an appropriate stage of conservation in their natural range;
- it must be restrictively interpreted;
- assign to the deciding authority the burden of proof for fulfilling the required conditions for each derogation.

# The CJEU decision

## Definitions:

- "habitat of a species" means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle (art. 1 –f Habitat Directive);
- the term "natural range" - area in which the species concerned is present or distributed in the course of its natural behavior and which is larger than the geographical area that presents the physical or biological elements essential for life and reproduction.

# The CJEU decision

## Definitions:

- “range” covers all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route. (Article (1)(f) of the Convention on the conservation of migratory species of wild animals)
- “species of animals that exploit large habitats” the natural range of those species also includes sites situated outside the protected areas and includes all the places within the natural range which present the physical or biological factors essential to their life and reproduction.

# The CJEU decision

## The principles arising from the decision

1. The protection provided for in Article 12(1) of the Habitats Directive:

- cannot be limited to protected sites;
- does not comprise any limits or borders;
- a wild animal which strays close to or into human settlements, passing through such areas or feeding on resources produced by humans, cannot be regarded as an animal that has left its "natural range".

# The CJEU decision

## The principles arising from the decision

2. The prohibitions laid down in Article 12 (1) (b) and (d) of the Habitats Directive shall apply to all specimens of protected animal species, regardless of their location.
3. The capture or killing of a protected animal must be considered at least as a disturbance within the scope of the Directive.

# The CJEU decision

## The principles arising from the decision

4. It is not compatible with the objective of the Directive to systematically deprive specimens of protected animal species when their "natural range" covers areas of human settlements.

5. The capture and transport of a specimen of a protected animal species covered by the prohibitions laid down in Article 12 of the Habitats Directive may be justified only if it is subject to a derogation adopted by the competent national authority in accordance with Article 16 of that Directive, especially for reasons of public safety.

# The CJEU decision

## Answer:

“Article 12 (1) (a) of Council Directive 92/43 / EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2013/17 / EU, of May 13, 2013, must be interpreted as meaning that the capture and transport of an animal protected under Annex IV of this directive, such as the wolf, on the outskirts of a human settlement or in such an area, are liable to fall under the prohibition established in this provision.”

# The follow-up decision

- The prosecutor's argument that the interdiction provided by art. 12 of the Directive would not operate in the present case, was denied.
- The judge examined whether non-compliance with this prohibition could be concretely imputed to the offenders.

# The follow-up decision

- The judge highlighted that European Courts of Human Rights (ECHR) always remind the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined by the law. This requirement is satisfied when the individual can know from the wording of the relevant provision which acts and omissions will make him/her criminally liable. (Navalnyy vs Russia; Zaja vs Croatia)

# The follow-up decision

- The judge noted that due to the ambiguity of the terminology (more precisely the notions of natural range and nature) of the relevant international agreement and its interpretation by the domestic authorities, the offenders were unable to foresee, in a reasonable way, that the derogation under art. 16 from the Directive (art. 38 from national law) was necessary.

# The follow-up decision

- The domestic norm of incrimination (art. 52 GEO 57/2007) does not meet the predictability requirements necessary for the offender to be able to adapt his/her behaviour accordingly.
- The Court established also, regarding the transport, that although the Regulation 2005/1 on the protection of animals during transport, contains rules on transport, there is no criminal charge for non-compliance with these rules.

# The follow-up decision

- Art. 25 provides that Member States impose sanctions for non-compliance with the provisions of the Regulation, but the judge found that there is no offence established by Romanian domestic legislation.
- Taking into consideration all these reasons, the judge rejected the criminal complaint against the two offenders.

# The wolf – *Canis lupus*



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# The wolf – *Canis lupus*



The wolf – *Canis lupus*

*Thank you  
for your  
attention!*

