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In case no. 963-22, the **Swedish Carnivore Association** (Appellant) v. the **County Administrative Board of Jämtland** (Respondent), the Supreme Administrative Court delivered the following judgment on 6 October 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the claim to obtain a preliminary ruling from the European Court of Justice.

The Supreme Administrative Court dismisses the case.

BACKGROUND

1. As a starting point, the brown bear (*ursus arctos*) is protected from hunting, but derogations may be permitted under certain circumstances. This case addresses whether a county administrative board had cause to take a decision regarding a licensed hunt – hunting which, by virtue of a special permit, takes place for a specific period of time – for 200 brown bears.
2. It can be estimated that, in 2020, there were approximately 2,900 brown bears in Sweden based on pellet-group counts and the so-called *bear watch*, i.e. the bear observations collected by hunters. The bear is a species which reproduces slowly. Most female bears reproduce for the first time at 4–7 years of age. The females procreate normally at 2–3 year intervals and normally give birth to 1–4 young. Bears lead solitary lives, and the young follow the female for one or two years. Wild bears may reach up to 30 years of age. Bear mortality is greatest during the first year of life when a relatively large percentage of the yearlings die. The most common cause of death is being killed by unfamiliar males. The most common cause of death amongst adult bears is legal hunting. The genetic status of the Swedish bear population is considered sound.

3. In Sweden, the brown bear is found throughout its natural range, which has been determined to be the counties of Norrbotten, Västerbotten, Jämtland and Västernorrland and parts of the counties of Dalarna, Gävleborg and Värmland. The minimum level for a favourable conservation status of bears has been determined by the Swedish Environmental Protection Agency at 1,400 individuals nation-wide. In the event the number of bears is lower, the species is deemed to no longer possess favourable conservation status.
4. Pursuant to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitat Directive), the brown bear is a strictly protected species. This entails that, as a starting point, hunting bears is prohibited. According to the Directive and case law from the European Court of Justice, there may be derogations from this prohibition provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the population at a favourable conservation status in their natural range. Even if the hunting bag is not in itself detrimental to the maintenance of the species at a favourable conservation status, it may not entail a significant negative impact on the structure of the population. It is also required that the hunt takes place under strictly supervised conditions, on a selective basis and for a limited quantity of animals.
5. The possibility to derogate from the protection of, *inter alia*, bears is governed by section 23 c of the Hunting Ordinance (1987:905).
6. The Swedish Environmental Protection Agency establishes for each county the lowest number of bears which is to subsist in order to guarantee the favourable conservation status of the bear population. As regards Jämtland county, where the hunt relevant in the case has been conducted, the minimum level has been established at 370 bears. According to an inventory in 2020, there were slightly more than 1,000 bears in the county.

7. In 2021, the County Administrative Board of Jämtland took a decision regarding licensed hunting for 200 bears in the county distributed over eight hunting areas. The decision was motivated by the fact that the hunt was necessary primarily to reduce damage for reindeer husbandry, but also to achieve, within a period of five years, the management objective of 650 bears within the county and thereby maintain the acceptance of bears. The license was associated with conditions regarding, *inter alia*, conduct of the hunt, allocation of responsibility, reporting, and handling of bears which had been killed and shot. One condition was that a female bear accompanied by young and the young which followed a female bear, irrespective of the age of the young, could not be killed. The hunt could be conducted commencing 21 August up to and including 15 October 2021.
8. The Swedish Carnivore Association appealed the decision and claimed that it was to be overturned or, in the alternative, that the number of bears to be hunted was to be reduced and stated the following. Measures which do not have an effect which contributes to maintaining or restoring the favourable conservation status of a species may not form the basis for a derogation from the strict protection enjoyed by the species. The relevant licensed hunt is intended to reduce the bear population and thereby lacks support in the Habitat Directive. Even if licensed hunting of strictly protected species cannot be deemed to be impermissible per se, the Directive states that hunting may only be permitted for a “limited number” of animals. The expression is to be understood as a “small number”, which is what is stated in the so-called Birds Directive (Article 9(1)(c) of Directive 2009/147/EC on the conservation of wild birds). A hunt for 200 individuals – a total of 501 bears in the country – does not constitute a limited number but, rather, constitutes hunting on a large scale. In addition, it is obvious that a derogation from the strict protection will not be permitted only because the relevant species has been deemed to have achieved a favourable conservation status.
9. The Administrative Court in Luleå, which rejected the appeal, found that the purpose of the hunt was acceptable per se and that the stipulated hunt could be considered suitable in relation to the stated purpose. In addition, it was considered

that there was no suitable solution other than a licensed hunt in order to achieve the stated purpose. The administrative court was also of the opinion that the hunt pertained to a limited number of individuals since it would not negatively affect the favourable conservation status of bears and that the hunt was therefore suitable taking into account the size and composition of the population. Finally, the court was of the opinion that the hunt would take place under strictly supervised conditions on a selective basis. The requirements for taking a decision regarding a licensed hunt of a maximum of 200 bears were thereby fulfilled.

10. The Administrative Court of Appeal in Sundsvall rejected the appeal to it. The administrative court of appeal made essentially the same finding as the administrative court and added that the hunt did not entail a significant negative impact on the structure of the bear population.

CLAIMS, ETC.

11. *The Swedish Carnivore Association* claims that the rulings of the lower courts are to be overturned and that the Supreme Administrative Court is to obtain a preliminary ruling from the European Court of Justice. The Association states that the stipulated hunt did not pertain to a limited number of bears and was thereby incompatible with the Habitat Directive.
12. *The County Administrative Board of Jämtland* is of the opinion that the appeal is to be rejected.
13. *The Swedish Environmental Protection Agency* has asserted the following in an opinion obtained by the Supreme Administrative Court. The determination of whether the hunt is suitable taking into account the size and composition of the bear population must be carried out on the basis of a comparison with the population level based on the particular circumstances of the species. The stipulated licensed hunt is considered to have been possible without creating a risk to the favourable conservation status of the bear population.

REASONS FOR THE RULING

The question in the case

14. The question in the case is whether licensed hunting of 200 bears is suitable taking into account the size and composition of the population, in light of the fact that such hunt, according to the Habitat Directive, may only pertain to a limited number of individuals.

Legislation, etc.

15. Article 2 of the Habitat Directive provides that the aim of the Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the EU Member States. Measures pursuant to the Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest. Measures taken pursuant to the Directive shall take account of economic, social and cultural requirements and regional and local characteristics.
16. According to Article 12(1)(a), 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 all forms of deliberate capture or killing of specimens of these species in the wild. The brown bear is listed in the annex.
17. Article 16(1)(e) provides that the Member States, in derogation from Article 12, may allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities. A condition therefor is that there is no satisfactory alternative and that the derogation

is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

18. The term *taking* covers hunting for the purpose of killing animals (HFD 2016 reported case no. 89).
19. Section 23 c of the Hunting Ordinance states that the condition for licensed hunting of, *inter alia*, bears to be permissible is that there is no satisfactory alternative and that the hunt is not detrimental to the maintenance of the population of the species at a favourable conservation status in its natural range. Furthermore, the hunt must be suitable taking into account the size and composition of the population and take place on a selective basis and under strictly supervised conditions.
20. Pursuant to section 5, first paragraph of the Bear, Wolf, Wolverine, Lynx and Golden Eagle Management Ordinance (2009:1263) – as worded at the time of the appealed decision – the Swedish Environmental Protection Agency shall, following a proposal from the cooperation councils, establish minimum levels for the subsistence of, *inter alia*, bears in each and every carnivorous animal management area and county.
21. The Swedish Environmental Protection Agency has established that there shall be not less than 140 reproductions of bears, i.e. 1,400 individuals in the country. Of these, not less than 900 individuals shall be situated in the northern carnivorous animal management area, of which 370 in Jämtland county (decision of the Swedish Environmental Protection Agency of 9 April 2020 regarding the establishment of minimum levels of bears for carnivorous animal management areas and counties, NV-01525-18).

The Court's assessment

22. The Union law regime relevant in the case has already been interpreted by the European Court of Justice, and there is sufficient guidance to decide the case. Consequently, there is no cause to obtain a preliminary ruling from the European Court of Justice. Accordingly, the claim therefore shall be rejected.
23. In HFD 2016 reported case no. 89, the Supreme Administrative Court stated that in order for a hunt to be suitable taking into account the size and composition of the population in accordance with section 23 c of the Hunting Ordinance, it is required that the hunt – pursuant to the Habitat Directive – takes place to a limited extent and pertains to a limited number. The question now is whether licensed hunting of 200 bears may be deemed to constitute a limited number.
24. The Habitat Directive does not contain any definition of what constitutes a limited number. Case law from the European Court of Justice provides, on the other hand, that the number will depend, in each case, on the population level of the species, its conservation status and its biological characteristics. The number must thus be determined taking into account geographic, climatic, environmental and biological factors as well as those enabling an assessment of the situation regarding the species' reproduction and total annual mortality rate owing to natural causes (*Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 71).
25. It follows that what is to be regarded as a limited number depends on the species and the relevant area. Thus, guidance may not – as already established by the Supreme Administrative Court in HFD 2016 reported case no. 89 – be obtained from case law concerning the Birds Directive since the requirement in that Directive is another, namely that derogations may only be granted in respect of a “small number” of individuals.
26. What is decisive according to the Habitat Directive when a determination is to be made regarding the number of individuals for which a derogation may be granted

is that such number may not jeopardise the favourable conservation status of the species. The quantity may also not entail a significant negative impact on the structure of the population in question, even if the number per se is not detrimental to the maintenance of the favourable conservation status of the species in its natural range (*Luonnonsuojeluyhdistys Tapiola*, paragraphs 54, 71 and 72).

27. According to information, there were approximately 1,000 bears in the county, and a total of 2,900 in the entire country. No reason has come to light to call this information into question. The stipulated hunt may thereby not be deemed to have jeopardised the bear population's favourable conservation status.
28. Furthermore, the hunt was distributed over eight areas with a maximum number of bears which could be hunted in each area and was limited in so far as females and young who followed each other could not be killed. Accordingly, consideration was also given to the fact that the hunt would not entail a significant negative impact on the structure of the bear population.
29. The condition in the Directive according to which the hunt is to be conducted on a selective basis can also affect the number of individuals for which a hunt may be allowed. Taking into account the size of the population of the relevant species, its conservation status and its biological characteristics, it may be necessary that the hunt be limited to, for example, certain types or groups of individuals (*Luonnonsuojeluyhdistys Tapiola*, paragraph 73). Such a limitation may be decisive as regards, for example, species with a weak genetic status.
30. Taking into account the size of the bear population, its conservation status and its biological characteristics, as well as the fact that the population was deemed to have a good genetic status, the Supreme Administrative Court finds that the requirement of selectivity also did not impede a hunt for 200 bears.
31. In summary, the Supreme Administrative Court finds that the licensed hunt of 200 bears in Jämtland county pertained to a limited number and that the hunt thereby

may be deemed to have been suitable taking into account the size and composition of the population.

32. As regards the assessment of whether the purpose of the stipulated hunt was acceptable, whether there was a suitable alternative and whether the hunt was to take place under strictly supervised circumstances, the Supreme Administrative Court makes the same assessment as the lower courts. Accordingly, the county administrative board has shown that the requirements for taking a decision regarding a licensed hunt of a maximum of 200 bears in Jämtland county were fulfilled.
33. The period of validity of the decision of the county administrative board has expired. Accordingly, the case is dismissed.

Justices Helena Jäderblom, Inga-Lill Askersjö, Ulrik von Essen, Mats Anderson and Magnus Medin have participated in the ruling.

Judge Referee: Lisa Ragnesten.