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Convention on the Conservation of
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Your ref.	Your contact person	Our ref. 20200002	Our contact person Martin Eggen	Date 13.01.2020
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Change to the self-defence clause of the Nature Diversity Act is now a matter of urgency

The Norwegian Ministry of Climate and the Environment (KLD) instigated a hearing in autumn 2019 concerning management of predators in Norway. One of the proposals was to make changes to Section 17 of the Nature Diversity Act (the self-defence clause). This was in response to lack of satisfactory national legislation under the Bern Convention, which resulted in a possible case file against Norway (2017/01: Lack of legal protection for Northern goshawk and birds of prey in Norway). This case file will be screened again at the next meeting of the standing committee, taking place on 1-4 December 2020.

Following the shooting of a White-tailed Eagle in Fyresdal in Telemark county (southern Norway) in 2017, a man was found not guilty in the District Court, and again later in the Court of Appeal. The ruling by the Court of Appeal was made in December 2019. Having followed this case closely, we notice a clear lack of professional understanding of the situation by the courts. It cannot be accepted that a situation where a White-tailed eagle which was in close proximity of sheep was interpreted as a situation requiring action that resulted in the killing of the eagle, neither factually, professionally, nor legally. It is unacceptable to interpret the situation as requiring the need to kill the eagle, when such a situation does not even arise in areas where White-tailed Eagles are present in close proximity of sheep on a daily basis. We have previously informed the Bern Convention Secretariat about this in a letter of November 2018 (our ref: 2018/575-410.2, see attached file).

The judgements made by both courts clearly indicate that the current legislation does not offer the protection that raptors in Norway require under the terms of the Bern Convention. The judgement also sets a precedence regarding the interpretation of the self-defence clause of the Nature Diversity Act, and effectively paves the way for killing raptors such as White-tailed Eagles across the whole country. In the coming months, we might see other similar situations where sheep, lambs and White-tailed Eagles are close to one another. The same might apply to calving areas for domestic reindeer. Up until now, this has not been considered to be a problem.


We request that the Ministry enact appropriate legislation as soon as possible, and in line with the suggestions made by BirdLife Norway to the the aforementioned hearing. The fact that the Ministry for Climate and the Environment are aware that the legislation must be in line with the terms of the Bern Convention, and that they have suggested that the clause “is deemed necessary” be reinstated in the self-defence clause, is seen as a positive move. We would, however, strongly discourage against a further change which the Ministry has proposed and which we have commented upon previously, namely that the Ministry want the self-defence clause in Section 17, subsection 2 to be changed such that the condition “under direct attack” is altered to “immediate approaching attack”. Such a change would be irresponsible and is not in line with the requirements under the Bern Convention. The suggestion is problematical as it would allow for a wide spectre of situations wherein one can use one’s own personal judgement of a potential situation where one can kill predators, and/or where the courts need to consider whether an actual attack was the case. Under Article 9 of the Bern Convention, killing shall only be used as a last resort where there are no other satisfactory solutions.

Concluding remarks

A domestic animal is not under attack until the attack actually takes place, whereas the proposal from the Ministry for Climate and the Environment would mean that one can take action under the self-defence clause before the attack happens, either because “the animal was about to attack, or that there were clear indications that the animal was about to undertake an immediate attack”. One cannot expect the general public to have the knowledge nor the competence about animal behaviour, potential prey or how these interact. The proposed wording of the legislation regarding any “immediate approaching attack” could lead to situations where various persons mean that they can use the self-defence clause if raptors fly low over livestock, without having knowledge or time to assess the likelihood of an attack. Such actions are therefore generally considered as pure guesswork.

We demand and expect that the Ministry ensures that the regulation is in line with the wording 'under direct attack', such that the case can be closed by the Bern Convention. BirdLife Norway will continue to engage in this matter until this is achieved.

Yours sincerely,



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