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# The place of animals in the legal system based on the Hunting Law: Legal and humane aspects

## ABSTRACT

Since the late 1920s, the legislator has been trying to indicate the place of animals in the legal system. Due to their psychophysical features, they can be classified neither as things nor as persons. Determination of the place of animals in the legal system was extremely important due to the need to grant them legal protection in order to combat inhumane treatment. Today, the term “animal” is regulated in the Animal Protection Act, which clearly states that an animal is not a thing. However, in matters not regulated in the said act, laws applicable to things apply. Such subjectivity of animals is opposed by the understanding of game under the Hunting Law. What is more, this is not the only significant difference in the understanding of these related terms based on analysis of the two legal instruments. Humaneness viewed through the prism of the two pieces of legislation seems to be contradictory – the above-mentioned acts present different understanding thereof as well as different implementation by law. The cited acts were analysed in terms of literal, purposive, logical, and functional interpretation. Research into the issues in question was carried out with the use of dogmatic-legal, theoretical-legal, historical-legal, and sociological methods. This publication indicates the problem of ambiguity of the term “animal” based on the Hunting Law. Its aim is an in-depth analysis of the legal aspects of humane protection of animals, as well as an *a contrario* presentation of hunting practices. The research work carried out has suggested both inconsistencies as to identical terms in the above-mentioned acts, and a clear problem with regard to respecting and implementing the norms that stem from the provisions of the Hunting Law. Such results lead to a justified concern about the topicality of the legal solutions presented in the said act, while approval of this position should result in a conclusion that there is a need to amend the Hunting Law.

## KEYWORDS

hunting law, animal protection, state property, humaneness

## Introduction

Since the dawn of time, animals have been an essential element of human life. In prehistoric times, man hunted animals in order to obtain, above all, meat, but also, among other things, hides and pelts necessary for survival. As time went by and mankind developed,

animals turned from wild game into farm animals. Man was less and less often forced to hunt in order to survive. Over time, the need to hunt was almost completely eliminated and the only reason why it still exists today seems to be the so-called “cultural heritage”. Undoubtedly, the fact that animals had been domesticated significantly influenced the way animals were perceived. With every new century, the position of animals has been changing, leading to a situation where we can no longer speak of hunting as an institution essential for the functioning of human life. In the thinking of a significant portion of the society, there has been a generational change that has resulted in perceiving an animal as a living being that deserves to be treated humanely, too. If it is able to feel pain and suffer, it should be distinguished from other elements of the environment. In view of the above, also the legislator should have listened to the ever stronger demands made by the society for changes in legislation as regards the issue of humaneness in how animals are treated.

## Evolution of the term “animal”

In Poland, the first instrument regulating animal-related matters dates back to the interwar period – it is the Regulation of the President of Poland dated 22 March 1928 on the protection of animals.<sup>1</sup> The said instrument was not extensive and did not contain any complex codifications. Despite the fact that it consists of merely 12 articles, it is an extremely important regulation from the standpoint of animal protection. It can be said that this tiny legal instrument is a milestone for the treatment of animals under law. Before it was issued, an animal itself was not covered by legal protection. It is therefore important to point out the significance of this regulation in the history of Polish law. By far, the most important point is Article 1, which prohibits the abuse of animals. The direction set out by the legislation, which does not permit improper treatment of animals, means that, through the said instrument, the legislator expressed the need to develop an approach that should be taken by the legal system and, more importantly by the public consciousness, in the perceiving of animals. The said article is a clear and unambiguous beginning of a humane approach to animals. It is also worth mentioning that the same article specifies what an animal should be considered to be. According to its provisions, the following creatures are animals:

- 1) All domestic and tamed animals and birds,
- 2) Caught wild animals and birds as well as fish, amphibians, insects, etc.

In Article 2, the legislator also enumerated ten points that clearly indicated what behaviour is understood as “abuse” under law. It ought to be emphasized that the provisions in question were not *lex imperfecta*, because measures such as fines and arrests were provided for as a consequence of violating these norms. Do note that in cases where the perpetrator acted with exceptional cruelty, they were punishable by imprisonment for up to 1 year.

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1 Regulation of the President of Poland dated 22 March 1928 on the protection of animals, Dz.U. (Journal of Laws) 1928, no. 36, item 332, hereinafter referred to as the “Regulation of the President of Poland dated 22 March 1928”.

Undoubtedly, another noteworthy event in the process of shaping the term “animal” in the Polish legislation was the creation of the Code of Offences of 31 May 1971,<sup>2</sup> which is an instrument that is still in force today. The provisions of the Regulation of the President of Poland dated 22 March 1928 concerning animal abuse were incorporated into the said Code of Offences and placed in Chapter VIII entitled *Offences against public order and peace*. Such classification suggested at least two important aspects. The first is the legal aspect, which meant that the Code of Offences – by virtue of the amending provisions contained in this act – resulted in the repealing of the Regulation of the President of Poland dated 22 March 1928 with regard to the provisions concerning animal abuse, and, more specifically, Articles 4, 6, and 8 of the said regulation. The second important dimension was the very placement of the issue of inappropriate behaviour towards animals. The inclusion, by the legislator, of a ban on abuse in the Code of Offences indicated an axiological need to indicate that animal welfare is a public good.

The essence of legislation until now is the Animal Protection Act of 21 August 1997.<sup>3</sup> This legal instrument is the first such a comprehensive regulation which, in its entirety, pertains to animal rights. The basis of the said act is Article 1, which is of fundamental importance from the perspective of the protection of animal rights. The article states *expressis verbis* that man owes protection, care, and respect to animals. Furthermore, the article establishes that an animal is not a thing. This position, expressed in such a way, is of key historical importance because, before the date of publishing the Animal Protection Act, the position of animals was unclear. Through the norms that it established, this act led to the placing of animals under legal protection. It should also be stressed that the Animal Protection Act is the first statutory-rank regulation pertaining to this matter, and can be described as relatively extensive since it consists of 44 articles. Moreover, from the standpoint of legal and humane aspects, Article 4 is of no small importance. It contains legal definitions of the said act, where one can find such terms as humane treatment of animals and the need for quick slaughtering. Article 5 of the same act is an additional expression of how important an aim humane treatment of animals is. It reads: “every animal needs to be treated humanely”.

## Legal instruments that regulate the hunting law

When analysing animal protection issues, particular attention ought to be paid to the links between this issue and the hunting law. Hunting is a field that interferes with the animal world to a great extent. As far as legal regulations are concerned, the one that “leads the way” and is the only legal instrument of statutory rank is the Hunting Law of 13 October 1995,<sup>4</sup> which consists of 64 articles. The primary subject matter of the said act are the main

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2 Act of 20 May 1971 Code of Offences, Dz.U. (Journal of Laws) 2019, item 821, as amended, hereinafter referred to as the “Code of Offences”.

3 Animal Protection Act of 21 August 1997, Dz.U. (Journal of Laws) 2020, item 638, hereinafter referred to as the “Animal Protection Act”.

4 Hunting Law Act of 13 October 1995, Dz.U. (Journal of Laws) 2020, item 1683, hereinafter referred to as the “Hunting Law”.

assumptions of hunting and of the hunting economy, as well as the objectives of the hunting procedure. The said instrument is fundamental due to the criminal-law norms that it contains.

However, it is not possible to speak of completeness of the Hunting Law Act. There is no doubt that it should be pointed out that, despite its complexity and extensive subject matter, it is not a comprehensive instrument. In order to fully understand the issues of the Polish hunting law, the above-mentioned act should be examined together with the Statute of the Polish Hunting Association,<sup>5</sup> the Set of Principles of Ethics of Hunting Traditions and Customs compiled by the Committees for Ethics and Hunting Customs of the Chief Hunting Council of the Polish Hunting Association,<sup>6</sup> the Regulation of the Minister of the Environment dated 23 March 2005 on detailed conditions for carrying out hunts and marking of carcasses,<sup>7</sup> and the Regulation of the Minister of the Environment dated 11 March 2005 on establishing the list of game species.<sup>8</sup> Only after reading the above-mentioned instruments can one speak of exhausting the issue of hunting law in its essence.

In the regulation on establishing the list of game species, the Minister of the Environment points out key issues concerning the implementation of the Hunting Law Act, that is, the Minister establishes the list of game species by dividing them into large game (7 species: moose, red deer, sika deer, fallow deer, roe deer, wild boar, mouflon) and small game (24 species, such as: fox, raccoon dog, badger, pine marten, American mink). It is also necessary to note the Regulation of the Minister of the Environment on detailed conditions for carrying out hunts and marking of carcasses. It details, *inter alia*, the conditions for hunts depending on the game, as well as the requirements that must be fulfilled when carrying out individual or group hunts.

## The term “animal” in the Animal Protection Act versus the Hunting Law

It should be emphasized at the outset that the understanding of an animal under the Hunting Law and under the Animal Protection Act is strikingly different. In the Animal Protection Act, an animal is perceived as a living being, that is to say, one that is capable at least of suffering, as the legislator directly points out. The fact that an animal is separated from the term “thing” is extremely important too. This not only has legal consequences, but also necessitates a change in the psychological approach to animals. Through such a legal regulation, not only do they gain a completely different position and become a new participant

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5 Polish Hunting Association, *Statut Polskiego Związku Łowieckiego*, 16.02.2019, [https://statut-pzl.pl/wp-content/uploads/2019/03/NOWY\\_STATUT\\_PZ%C5%81\\_2019.pdf](https://statut-pzl.pl/wp-content/uploads/2019/03/NOWY_STATUT_PZ%C5%81_2019.pdf). Accessed 10.09.2020.

6 Polish Hunting Association, *Zbiór zasad etyki i tradycji łowieckich*, [https://pzl.radom.pl/pliki/zbior\\_zasad\\_etyki\\_i\\_tradycji\\_lowieckiej.pdf](https://pzl.radom.pl/pliki/zbior_zasad_etyki_i_tradycji_lowieckiej.pdf). Accessed 10.09.2020.

7 Regulation of the Minister of the Environment dated 23 March 2005 on detailed conditions for carrying out hunts and marking of carcasses, Dz.U. (Journal of Laws) 2019, item 1782, hereinafter referred to as the “Regulation of the Minister of the Environment on detailed conditions for carrying out hunts and marking of carcasses”.

8 Regulation of the Minister of the Environment dated 11 March 2005 on establishing the list of game species, Dz.U. (Journal of Laws) 2017, item 1484, hereinafter referred to as the “Regulation of the Minister of the Environment on establishing the list of game species”.

in legal transactions, but they can also actually be regarded as a living element of the environment in the light of law. According to Article 45 of the Civil Code,<sup>9</sup> without prejudice to the situations listed in Article 1 para. 2 of the Animal Protection Act, animals must not be treated as material objects – they are left suspended between the rights of respect and protection of human life and the absence of similar regulations concerning things, which would be bizarre because of the fact that these are unable to experience suffering.<sup>10</sup> The Animal Protection Act also points out that man owes respect, protection, and care to animals.<sup>11</sup> This should be interpreted mainly in terms of treating animals with the respect and dignity they deserve, as well as applying the principle of humaneness and always ensuring proper living conditions.<sup>12</sup> However, at this point, it seems justified to also pay particular attention to Article 2 of the said act, which states that the act regulates the handling of vertebrate animals, which are characterized by high individual development; but if we were to limit this group to the classes of mammals and birds that are of strict interest to us in this publication (because they are hunted), we could definitely say that in the case of both classes we are dealing with living creatures that have advanced cerebral abilities not only in terms of certain complex activities, the use of tools or the making of some inferences, but also in view of the fact that, with most species, it is easy to observe behaviour that indicates the ability to create bonds or attachment between individuals, or even to show feelings in the most human sense of the word.<sup>13</sup> This is true not only of mammals, which are so easy for human beings to identify with, if only because they belong to the same class and consequently all of them, like *homo sapiens*, have a cerebral cortex, but also of birds which, according to research, have a number of neurons in the brain mantle that is twice as high as that found even in primates.<sup>14</sup>

In order to refer to the meaning of the term “animal” that may be inferred from the Hunting Law Act, one ought to follow the guidelines set out in the Regulation of the Minister of the Environment on establishing the list of game species, in which the list of the only game species to which this act applies is indicated. As previously noted, those animals include species that belong to the classes of mammals and birds. The Hunting Law Act

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9 Civil Code Act of 23 April 1964, Dz.U. (Journal of Laws) 2020, item 1740, as amended, hereinafter referred to as the “Civil Code”.

10 It is worth mentioning the ruling of the Supreme Court dated 9 March 1973, reference number I CR 58/73, which directly states that “forest animals are not things within the meaning of Article 45 of the Civil Code, therefore the State cannot be their owner within the meaning of civil law and is only liable for any damage caused by these animals if the act so provides”.

11 As indicated by the judgement of the Voivodeship Administrative Court with its seat in Poznań, dated 29 August 2018, reference number IV SA/Po 332/18, from Article 1 para. 1 of the Animal Protection Act “it follows that every animal has the right to expect from people a due understanding, treatment in accordance with generally accepted norms, and even respect. All legal measures taken with regard to animals should take into consideration their welfare and, above all, their right to exist”.

12 Z. Gądzik, *Ochrona humanitarna zwierząt utrzymywanych w ogrodach zoologicznych*, “Studia Prawnicze KUL” 2019, pp. 114-116, <https://czasopisma.kul.pl/sp/article/view/5851/7937>. Accessed 10.09.2020.

13 K. Kuszlewicz, *Zwierzęta objęte ustawą o ochronie zwierząt*, in: *Prawa zwierząt. Praktyczny przewodnik*, Warszawa 2019, pp. 74-116.

14 A. Żykubek, *Czy wiecie, że ptaki mają w mózgu więcej neuronów niż ssaki?*, 20.06.2016, <http://kognitywistyka.kul.pl/ptaki-maja-mozgu-wiecej-neuronow-niz-ssaki/>. Accessed 10.09.2020.

does not provide for a separate legal definition of game, but only states that it is state property. Such a definition of game raises justified doubts as to its interpretation. According to the view presented by A. Pązik,<sup>15</sup> the doctrine suggests that in the light of Article 2 of the Hunting Law Act the right of ownership (in the civil-law sense) arises at the moment when an animal is caught and taken possession of, or, if killed, its carcass becomes the object of ownership.<sup>16</sup> As a result, a free animal that has not been taken possession of is not an object in a civil-law relationship until it has been taken possession of. A different opinion is presented by Roman Stec<sup>17</sup> who follows in the footsteps of W. Radecki and claims that pursuant to Article 2 of the Hunting Law Act the hunting right is not a right of ownership within the meaning of Article 140 of the Civil Code but rather a special subjective property right of an absolute nature, whereas free animals, which are not game, are not the object of any property right.<sup>18</sup> The dispute about how to properly understand the given legal regulation has not been resolved and there is no consistent interpretation thereof. It cannot be stated that, under the Hunting Law, live game is a thing, but neither can it be stated that free game is not a thing.<sup>19</sup> A provision constructed in this way causes legal uncertainty because it cannot be clearly stated what position the legislator has adopted as the applicable position with regard to game which, *nota bene*, are animals too within the meaning of Article 1 of the Animal Protection Act. It seems necessary to resolve the issue of what the status of free game is in the light of the Hunting Law because, in the currently applicable formulation, it is impossible to determine its status unambiguously. In this discussion, it is worth pointing out that, within the meaning of property law, one cannot speak of free game. We must admit that a person cannot have a right of ownership if this entitled person does not have control over the animal. Therefore, free game – until taken possession of or killed – cannot be the object of a right of ownership within the meaning of Article 140 of the Civil Code. Consequently, it ought to be concluded that such an animal is not a thing, but the laws on things can be applied to it. In such a case, the animal becomes an object of an absolute property right. The above-presented definition of the legal norm differs from the literal interpretation of the provision contained in the Hunting Law because, in its current wording, it is misleading. Therefore, the said provision needs to be revised. It seems that it would be justified to unequivocally stipulate that game, which remains free and alive, is not a thing, but rather *quasi-property* of the state. Only when it is killed is it allowed to be covered under the right of ownership within the meaning of Article 140 of the Civil Code.

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15 A. Pązik, Article 2, in: M. Słomski, A. Pązik, *Prawo łowieckie. Komentarz*, Warszawa 2015.

16 Differently: W.J. Katner, in: *System prawa prywatnego*, Vol. 1, *Prawo cywilne – część ogólna*, M. Safjan (ed.), Warszawa 2012, p. 1337.

17 Similarly: E. Skowrońska-Bocian, M. Warciński, Thesis 6 of the commentary on Article 45, in: *Kodeks cywilny*, Vol. 1, *Komentarz do art. 1–44910*, K. Pietrzykowski (ed.), Legalis 2013.

18 R. Stec, Article 2, in: B. Rakoczy, R. Stec, A. Woźniak, *Prawo łowieckie. Komentarz*, Warszawa 2014.

19 M. Goettel, *Sytuacja prawna zwierzęcia po wejściu w życie ustawy o ochronie zwierząt*, in: *Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013, pp. 42-49.

## Ways of killing animals based on the provisions of the Hunting Law

According to the official statistics published by the Polish Hunting Association, in Poland there are currently 128,500 hunters and 18,500 candidates.<sup>20</sup> They are associated in 48 hunting districts. Notably, the number of hunters is increasing from year to year, as clearly demonstrated by the statistics: in 2012, there were 113,178 hunters, while in 2000, the number of hunters was only 100,236.<sup>21</sup> At this point, a conclusion should be drawn given the legal situation concerning the subjectivity of animals and the broadly-defined humaneness, i.e., living in an ever more ecological and environmentally friendly world, it may be puzzling that the number of hunters is on the rise, and not the other way round. Even more astonishing is how many game animals are killed during hunts. In 2018, the number of game killed was almost one million, or 951,241 to be precise. What is more, it ought to be noted that 3,463 carcasses of game were submitted to game purchase points in National Parks in 2017, although under the law, it is not permitted to hunt in National Parks. The only action permitted there under the law is “headage control”, but it must not be forgotten that the process taking place in National Parks is *de facto* identical to hunting. It is noteworthy that 1,262 pieces of game were shot dead in National Parks in 2007. These statistics suggest a significant extent of hunting in Poland.

Attention must be paid to a certain curious phenomenon, namely, the fact that hunting is particularly oriented towards profit from the sale of slaughtered animal carcasses,<sup>22</sup> while the hunters themselves describe it as preserving “hunting traditions”. Currently, the revenues of the Polish Hunting Association exceed PLN 300 million, and its main assets are revenues from hunts and the sale of carcasses and killed animals.<sup>23</sup> Zenon Kruczyński, in his article entitled “Współczesne myślistwo w Polsce. Raport subiektywny” (*Present-day hunting in Poland. A subjective report*), demonstrates a strong connection between the total amount of money spent on compensation and feeding of game, and the total amount of money obtained from the meat of killed animals. This is a kind of cause-and-effect sequence aimed at achieving the greatest possible natural increase in a specific species by means of feeding (which is artificial and unnatural to game), in order for that to lead to an ever greater number of animals to be shot which, in turn, generates huge profits.<sup>24</sup> The practice of feeding the animals, supposed to force an increase in the population, resulting in more killings as part of game population control, is confirmed by the life experiences as

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20 Homepage, General Statistics, [www.pzlow.pl](http://www.pzlow.pl). Accessed 10.09.2020.

21 Statistics Poland, *Leśnictwo 2012*, Warszawa 2012, p. 157, [https://stat.gov.pl/cps/rde/xbcr/gus/rl\\_lesnictwo\\_2012.pdf](https://stat.gov.pl/cps/rde/xbcr/gus/rl_lesnictwo_2012.pdf). Accessed 10.09.2020.

22 Z. Kruczyński, *Współczesne myślistwo w Polsce. Raport subiektywny*, “Dziki Życie” 2010, no. 10, <https://dzikiezycie.pl/archiwum/2010/pazdziernik-2010/wspolczesne-myslistwo-w-polsce-raport-subiektywny>. Accessed 10.09.2020.

23 R. Ślusarczyk, *Panie ministrze! Łowiectwo to wielki biznes i liczne przywileje. Czas z tym skończyć. W społecznych postulatach nie ma miejsca na kompromis*, Workshop for All Beings, 22.01.2018, <https://pracownia.org.pl/pracownia-aktualnosci/425-panie-ministrze-lowiectwo-to-wielki-biznes-i-liczne-przywileje-czas-z-tym-skonczyc-w-spolescznych-postulatach-nie-ma-miejsca-na-kompromis>. Accessed 24.08.2020.

24 Z. Kruczyński, *Współczesne myślistwo...*

well as the numerous statements and publications of biologists and ecologists.<sup>25</sup> Repeating of this behaviour is in total contradiction to the objectives of hunting laid down in Article 3 points 1–3 of the Hunting Law Act. By feeding game, hunters disturb the balance of the natural environment, which stands in opposition to their statutory goal. Moreover, it should be pointed out that by making it easier for an animal to get food, its population increases and then requires control. It seems obvious that if hunters did not provide animals with food in such overabundant quantities, culling on such a scale would not be necessary. It must be made clear that feeding animals on such a scale is not an actual measure to improve their living conditions; on the contrary, they lose their natural instinct for survival, which makes their existence highly dependent on humans.

Another issue that raises a lot of doubts is the very method of carrying out hunts. To begin with, attention should be paid to lead cartridges. In Poland, between 400 and 600 tonnes of this metal are found in forests every year due to shots fired by hunters. It is important to realize that by firing a single lead bullet and killing an animal with this shot, one causes much more damage than it might seem. Assuming that the animal that has been shot does not die immediately, but escapes so effectively that it is not found by the hunter, and then dies, the hunter causes a situation where the animal's body poses a significant environmental hazard. At this point, the following circumstances should be distinguished:

- 3) A situation where the body decomposes naturally and the lead contained therein enters the soil thus contaminating it. If vegetation grows there, it will be contaminated by the soil in which it grows. The said vegetation can then pass the lead contained therein on to the animal that feeds on it. Do note that the role of this animal can also be played by humans.
- 4) A situation where the body serves as food to a scavenger, whose living body receives the lead through the digestive system. This pattern may repeat itself, leading to a spread of the lead contamination in the environment.

The situations mentioned above are merely an example of the impact of lead on forest animals and the entire ecosystem. The use of lead cartridges stands in contradiction to Article 127 para. 1 point 3 of the Environmental Protection Law Act.<sup>26</sup>

§ 1 point 15 of the Regulation of the Minister of the Environment on detailed conditions for carrying out hunts and marking of carcasses contains a legal definition of a *postrzałek*, i.e., an animal wounded as the result of getting shot. Referring to the numerous hunting practices, it ought to be pointed out that contact with an animal wounded in this way is a common situation during hunts. This is due to the fact that no provision of the act introduces an obligation of annual shooting exercises supposed to improve the marksmanship of hunters. As a result, often the shots fired at the game hit a different part of the body than intended. When joining a hunting club, the candidate must know how to use the weap-

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25 A. Kepel, *Minister apeluje o dokarmianie zwierząt*, The Polish Society for Nature Protection "Salamandra", 14.06.2006, <http://salamandra.org.pl/component/content/article/41-ogolne/128-dokarmianie-zwierzat?directory=152>. Accessed 10.09.2020; Z. Kruczyński, *Koronne argumenty*, "Dziki Życie" 2005, no. 6, <https://dzikiezycie.pl/archiwum/2005/czerwiec-2005/koronne-argumenty>. Accessed 10.09.2020.

26 Article 127 para. 1 point 3 reads as follows: "animal and plant protection consists in preventing or limiting negative impacts on the environment that could adversely affect resources or the condition of animals and plants".



on. Unfortunately, in further practice, no one verifies their shooting skills. Furthermore, a practice typical among hunters is to aim at the animal's trunk. This is supposed to leave intact the trophy which, in principle, is the head of the animal. It should also be mentioned that a hunter's "takes" are scored by the Polish Hunting Association. It seems clear that both intentional and unintentional shots that do not immediately kill the animal result in a death that is far from humane, which it should be guaranteed to be in the light of Article 5 of the Animal Protection Act. A wounded animal may live for many hours after being wounded. As a rule, hunters look for any animals that have survived the gunfire from their weapons. It is common practice that a hunter does not go immediately to find the animal, but waits for a relevant period of time for the animal to bleed out and weaken in order to minimize the risk of the hunter being attacked. When animals are found still alive, they are rarely killed with the hunter's weapon, because a half-dead creature is an ideal opportunity to train young hunting dogs and boost their aggression. In most cases, the animal wounded by a gunshot dies from attacks by hunting dogs or from exhaustion. Only when these two eventualities do not happen as expected is the animal finished off with a gun. There should be no doubt that the events described above are far removed from the statutory matter, which in § 5 para. 1 point 3 of the above-mentioned regulation clearly states that "the hunter should seek out, approach, and kill the injured animal as quickly as possible in a way that spares it any unnecessary suffering".

According to the Regulation of the Minister of the Environment on establishing the list of game species, also 13 species of birds are considered as game. In order to hunt fowl, hunters use the same weapons as for killing other animals, i.e., pellet shot cartridges. It is also undisputed that birds often move in larger groups or V-formations. Generally, when a hunter points the gun at one of the flying birds, he/she will also hurt those around it. In the light of the opinion written by Michał Skakuj, entitled "Opinia o możliwości identyfikacji oraz o ryzykach związanych z odstrzałem wybranych gatunków ptaków łownych w warunkach polowania" (*An opinion on the possibility of identification and the risks associated with the shooting of selected species of game birds under the conditions of a hunt*),<sup>27</sup> it should be noted that only 70% of the fired pellet shot flies to the place at which the hunter was aiming (the field of focus). The remaining 30% is an "erroneous pellet shot" that, as a result of deformation when being fired, takes an unpredictable flight trajectory. The area covered by the pellet shot increases in proportion to the distance from which the shot was fired. Accordingly, assuming that the gun is fired from 40 m using 3 mm pellet shot, the covered area may have a diameter of almost 3 m. This is why bird hunting statistics are extremely drastic. Every year, hunters successfully kill about 140,000 birds, while 500,000 die after being shot. To make things even worse, in Poland there are legally protected bird species that are deceptively similar to those considered as game.<sup>28</sup> This leads to situations where hunters often kill an animal that is protected by law.

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27 M. Skakuj, *Opinia o możliwości identyfikacji oraz o ryzykach związanych z odstrzałem wybranych gatunków ptaków łownych w warunkach polowania*, Gdańsk, 10.03.2014, <https://niechzyja.pl/dokumenty/opinia-o-mozliwosci-identyfikacji-ptakow-łownych.pdf>. Accessed 10.09.2020.

28 *Zbliżone gatunki ptaków*, "Niech Żyją", [https://niechzyja.pl/baza\\_wiedzy/zblizone\\_gatunki\\_ptakow/](https://niechzyja.pl/baza_wiedzy/zblizone_gatunki_ptakow/). Accessed 10.09.2020.

Another issue of disputable ethicality are hunts with the participation of “beaters”, usually accompanied by hunting dogs. What is particularly odious about such hunts is the method of carrying them out.<sup>29</sup> The task of the beaters is to flush out or “drive the game towards lines of hunters standing in positions called flanks”,<sup>30</sup> often using dogs and making noise in order to scare the game in the right direction. Such way of hunting violates Article 6 para. 2 point 9 of the Animal Protection Act. Once the game runs in front of the flank, it is fired at. It must be emphasized that such a course of a hunt is in opposition to Article 3 point 3 of the Hunting Law Act, which clearly states that “the aim of hunting is to achieve the best possible individual condition of game”. What is more, Article 11 para. 2 point 7 of the same act indicates that “management of the game population requires, in particular, maintenance of an age and sex structure and size of the game population appropriate to ensure the balance of ecosystems and achieve the main economic objectives in agriculture, forestry, and fishing. It seems clear that driving the game by a group of hunters and then shooting at it has little to do with humane killing of the weakest individuals.<sup>31</sup> The dynamism of this situation excludes the possibility of verifying whether, by killing a particular individual, hunters will fulfil the population management objectives set out in the act. For this reason, it seems that the method of hunting described above violates the main assumptions of the Hunting Law Act which, *nota bene*, is the basis for the functioning of hunters in Poland.<sup>32</sup>

## Conclusion

The claim that hunting had a significant impact on people’s lives cannot be disputed but, as the world developed, the role of hunting gradually diminished. Hunting in its current form is an archaic institution that does not keep up with the modern needs or requirements of the society. It ought to be noted that, to a large extent, animals are no longer seen as things under the law, and therefore game also deserves law-regulated dignified treatment and adherence to relevant regulations, which in the current state of hunting is not the case. The actions of hunters are the cause of much controversy, and the existing legislation is no longer sufficient to meet the demands made by the society.

An issue that has been the subject of many discussions is the excessive and, in many opinions, unnecessary feeding of animals. It is easy to recognize that this practice is not dictated by the welfare of animals, but only by financial factors, that is, increasing the rev-

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29 R. Stec, *Wykonywanie polowania indywidualnego i zbiorowego* in: *Uprawianie łowiectwa i prowadzenie gospodarki łowieckiej*, Warszawa 2012, pp. 92-119.

30 Regulation of the Minister of the Environment dated 23 March 2005 on detailed conditions....

31 W. Daniłowicz, *Selekcja osobnicza*, in: idem, *Prawo łowieckie*, Warszawa 2020, pp. 84-86.

32 Attention should also be paid to situations where hunters make a mistake and kill the wrong animal, for example, as referred to in the judgement of the Voivodeship Administrative Court in Warszawa dated 5 September 2013, reference number IV SA/Wa 1162/13, in which the Court stated that no fault, even unintentional, can be attributed to the forest district office, because they could not have expected that “professional” Belgian hunters, who paid for the possibility of carrying out the hunt, would confuse a raccoon dog with a wolf and accidentally kill the wolf.

enues of hunting clubs. This stands in contradiction to hunting ethics, namely, Principle 10 listed in the Set of Principles of Ethics and Hunting Traditions,<sup>33</sup> which is the moral benchmark for hunters' behaviour. The said principle states that "a hunter does not seek material benefits in hunting, as hunting cannot be a means to obtaining them".

The killing technique that is in use should not deserve approval. The above examples clearly show that many actions are far from fulfilling the basic postulates, such as a quick and least painful death. This violates Principle 20 of the aforementioned set, which states that "a hunter is obliged to check the effectiveness of the shot or attack by the hunting bird, to look for the wounded game, and to humanely put an end to its suffering as quickly as possible".

Another issue that raises doubts is the fact that hunters obtain trophies from animals, which are then scored by the Polish Hunting Association. It seems unethical to obtain any trophies, let alone compete and fight for the highest score. The hunting culture is based on outdated foundations, which require change. Suffice it to mention that one of the customs is to smear one's face with a "paint" being the blood of killed animals, especially on the occasion of "baptisms" and "swear-ins". What also seems odd are some of the superstitions connected with hunting, such as grabbing women by the knee, following the rule that "the bigger the animal, the higher you grab", which means that "when you go hunting for small fowl you should grab a toe, for bigger fowl – by the ankle, for wild boar – by the knee, for deer and moose – by the..." supposed to ensure luck and a fruitful hunt. Even more astonishing is the fact that the Polish Hunting Association has applied for the above ritual to be included on the UNESCO national list of intangible cultural heritage.<sup>34</sup>

To sum up, there is a necessity to start a public discussion about the need to amend the set of legislation that regulates the legal matter in the scope of hunting. The contradiction in the understanding of the term "animal" under the Hunting Law Act and under the Animal Protection Act creates a situation of legal danger in the form of misinterpretation of legal norms, and, in consequence, illegal actions based on incorrectly made assumptions. The state of legal uncertainty cannot be left without the intervention of the legislator, so this fact alone should be an obvious argument for taking legislative action aimed at amending the Hunting Law Act. Also discussed should be the actual impact of hunting on the entire ecosystem and the further legal approval for certain activities of hunters. This publication has referred to many legally regulated issues that raise doubts as to the legitimacy of their legal acceptance and the social need to cultivate them.

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33 Polish Hunting Association, *Zbiór zasad etyki i tradycji łowieckich*, [http://pzl.radom.pl/pliki/zbiór\\_zasad\\_etyki\\_i\\_tradycji\\_łowieckiej.pdf](http://pzl.radom.pl/pliki/zbiór_zasad_etyki_i_tradycji_łowieckiej.pdf). Accessed 10.09.2020.

34 R. Jurszo, *PZŁ chce wpisać na listę UNESCO myśliwski obyczaj łapania kobiet za kolano. Lub wyżej, gdy większy zwierz*, *Oko Press*, 28.06.2019, <https://oko.press/pzl-chce-wpisac-lapanie-kobiet-za-kolano-na-liste-unesco-dokladniej-i-wiekszy-zwierz-tym-wyzej-mierz/>. Accessed 10.09.2020.

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