

## ECONOMIC ACTIVITY IN THE FIELD OF HUNTING

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**Purpose:** Economic activity in the field of hunting consists in the provision of tourist services involving hunting and in the activities in the field of trade in live animals, as well as carcasses and parts thereof. It should be noted that the protection of natural resources, including wild animal species, is one of the most important obligations of the state. The aim of the article is to analyse the legal regulations in force regarding the conditions for undertaking and conducting economic activity in the field of hunting.

**Design/methodology/approach:** Legal provisions, jurisprudence and literature were analysed in the study.

**Findings:** The article attempts to evaluate the applicable legal regulations and contains proposals for changes in legal provisions relating to the performance of economic activities in the field of hunting. Particular attention was paid to the importance of the adequate manner of controlling entrepreneurs regarding the provision of tourist services involving hunting and economic activity in the field of trade in live game, game carcasses and their parts.

**Originality/value:** The article indicates the issues related to conducting economic activities in the field of hunting. Attention should be paid to the fact that, so far, legal issues related to this type of economic activity have been marginally present in the literature.

**Keywords:** economic activity involving hunting, hunting law, commercial hunting, Business Entities Act.

**Category of the paper:** General review.

### 1. Introduction

Hunting has always been a form of human influence exerted on nature. While, centuries ago, its goal was to obtain food or clothing, today it is becoming an instrument for maintaining natural balance (Szpetkowski, 2011, p. 6).

The definition of hunting first appeared in Polish legislation in 1952, with the advent of the new socio-economic system. On October 29, 1952, the Decree of the President of the Republic of Poland on hunting law was published, approved by the Council of State (Daniłowicz, 2020). In the light of the decree, hunting consisted in planned game management in accordance with the requirements of the national economy and nature protection. However, the very game management was carried out based on an approved breeding plan and comprised game breeding and protection, hunting and the introduction of the hunted game onto the market. Moreover, game management was conducted by the State (Journal of Laws 1952, No. 44, item 300). Although there was a place for hunting in the new system, it was understood in a way very different from the traditional one. It has become an element of the national economy. Following the political transformation of 1989, the concept of hunting being a part of the national economy ceased to correspond to reality. However, the legislator maintained the definition of hunting, introducing significant modifications to it.

Contemporary hunting is not only an art rich in history and tradition. It is also one of the elements of nature conservation, as it was pointed out in the Act of October 13, 1995, Hunting Law. Pursuant to the Act, as an element of environmental protection, hunting consists in the protection of wild game and the management of game resources in accordance with the principles of ecology and rational agriculture, forestry and fishing (Journal of Laws 2020, item 67). Its aim is to protect, preserve the diversity and manage the populations of game animals, as well as to protect and shape the natural environment in order to improve the living conditions of the game. Furthermore, hunting consists in obtaining the best possible health condition of individuals and the appropriate size of populations of individual game species, maintaining the balance of the natural environment, combined with cultivating tradition and promoting hunting ethics and culture (Nüßlein, 2010). It is worth noting that, in the Act, broadly understood protection comes ahead of breeding or obtaining game. This order is not accidental, because it defines the hierarchy of priorities (Gwiazdowicz, 2012): the goals of nature protection and shaping the natural environment are put to the fore, followed by individual goals of hunters achieved without disturbing the natural balance. Finally, the Act identifies hunting as an element of culture (Radecki, 2014). It should be noted that the recreational function was only mentioned as the last of the four points defining the goals of hunting (Daniłowicz, 2020).

It is worth noting that the term "hunting" appears in the hunting dictionary to denote all matters related to game management, weapons, game shooting, hunting cynology and falconry, hunting law, hunting ethics, as well as hunting history, tradition and culture with the hunting jargon, literature, periodicals, art, music, applied arts and the rich organisational life, etc. (Józwiak, and Biały, 1994).

## 2. Conducting business in the scope of hunting

The provisions of Chapter 4 of the Hunting Law Act concerning economic activity in the field of hunting have changed repeatedly. Originally, the chapter was entitled "Concessions". This was related to the Act effective then, of December 23, 1988, On Economic Activity, which licensed any business activity in the scope of hunting. The nature of this activity was based on the fact that its performance required the fulfilment of specific conditions defined by the legal provisions (Szydło, 2005). Then, the Act of November 19, 1999, Law of Business Activity came into force. It changed the name of Chapter 4 of the Hunting Law Act to "Permits". The reason for this change was the transition, in terms of economic activity in hunting, from the licensing mechanism to the permit mechanism (Radecki, 2014). At this point, it should be noted that the following types of activities were covered by the, initially, licensing and then the permit mechanism:

1. trade in live animals,
2. trade in carcasses of game,
3. sale of tourist services.

The situation changed again after the Act of July 2, 2004, came into force – the provisions introducing the Act on the Freedom of Economic Activity. The provision of tourist services was considered a regulated activity then, while the other two types of activity were exempted from regulation and no longer required a licence or permit.

A further significant amendment to the Hunting Law Act was made by the Act of March 25, 2011, on Reduction of Administrative Barriers for Citizens and Entrepreneurs. Economic activity consisting in the provision of hunting tourist services on the territory of the Republic of Poland and hunting abroad ceased to be an activity regulated within the meaning of the Act on Freedom of Economic Activity and no longer requires an entry in the hunting register. This activity is still an economic activity, however, it is no longer an activity regulated in the form of a license, permit or an entry in the register of regulated activity (Radecki, and Danecka, 2019).

Currently, the basic act regarding the performance of economic activity is the Act of March 6, 2018, the Law of Entrepreneurs. This act defines economic activity as organised gainful activity pursued in one's own name and on a continuous basis (i.e. Journal of Laws 2019, item 1292).

Organising a business consists in creating appropriate conditions for pursuing the activity, its preparation and establishment. Economic activity is understood as a gainful activity if there is an intention to earn income, while the actual obtaining income is not necessary. The continuity of the activity indicates repeatability, which does not exclude the possibility of taking breaks in its conduct. The intention to repeatedly perform certain activities is essential here, thus incidental or one-off activities have been eliminated from the definition of economic

activity. On the other hand, the performance of economic activity on one's own behalf is distinguished by the fact that it has a direct impact on the entrepreneur who benefits from its performance and it is the entrepreneur who bears the risk associated with the activity conducted (Lewandowski, 2019, pp. 99-100).

Moreover, it is worth pointing out that the case law of the Supreme Court distinguishes several specific characteristics of economic activity:

- professional character, i.e. a character which is permanent, not amateur or occasional,
- compliance with the principles of profitability and gain,
- repeatability of activities (e.g. seriality of production, typicality of transactions, constant cooperation, etc.),
- participation in business transactions (III CZP 40/91).

Economic activity in the field of hunting involves provision of tourist services including hunting and trade in live game, game carcasses and their parts.

An entrepreneur who undertakes and performs economic activity consisting in the provision of tourist services, including hunting carried out both on the territory of the Republic of Poland and abroad, is obliged to meet the conditions specified in the Hunting Law Act, such as:

- 1) establishment of mandatory security for settling any third party claims for non-performance or improper performance of obligations on the part of the entrepreneur,
- 2) passing an examination on the knowledge of the rules of hunting and principles of nature protection or employing a person who meets this requirement,
- 3) submitting to the competent marshal of the voivodeship, before the expiry of the previous contract or release of funds blocked in a bank account, the original documents confirming the conclusion of the next contract or making another block of funds referred to in art. 18 sec. 3 of the Hunting Law.

Securing claims is an institution derived from Civil Law. By introducing it, the legislator strove to facilitate the situation of the aggrieved party, because the enforcement of civil liability by civil proceedings might turn out to be quite complicated (Radecki, 2015).

Establishing a security consists in concluding a civil liability insurance contract for damage caused in connection with the performance of business activity or in concluding a bank or insurance guarantee contract, or in blocking funds in a bank account, for the benefit of the competent voivodeship self-government, in the amount of 4% of the annual income from the business activity conducted by the entrepreneur, obtained in the financial year preceding the year of concluding the contract, but not less than the PLN equivalent of EUR 20,000, calculated according to the average exchange rate of foreign currencies announced by the National Bank of Poland on the last day of the month preceding the month in which the funds were blocked. The detailed scope of the compulsory insurance, the date when the insurance obligation arises and the minimum guarantee amount are determined by the regulation of the minister responsible for financial institutions, in consultation with the minister in charge of the environment, having consulted the Polish Insurance Association.

The condition of possessing knowledge of the principles of hunting and nature protection has been regulated by the legislator in the form of an alternative: either the entrepreneur has knowledge of these principles or shall employ a person who knows them. The principles of hunting are set out in the Hunting Law and secondary legislation. On the other hand, the principles of nature protection are contained in the Nature Conservation Act and in the regulations issued on its basis.

The examination on the knowledge of hunting and the principles of nature protection is carried out by an examination committee appointed by the minister in charge of the environment. It covers the knowledge of the provisions on nature protection, weapons and ammunition, as well as hunting law (i.e. Journal of Laws 2020, item 67). The examination consists of two parts: a written test and an oral section. The written part consists in selecting one from among several suggested answers to each of the questions contained in the test. Having obtained not less than 60% of correct answers, the candidate is admitted to the oral part consisting in answering four questions asked by the examination committee. Moreover, the members of the examination committee may also ask supplementary questions.

A positive grade in the oral part of the examination results in the examination being considered passed, and a relevant certificate is issued then. It is worth adding that in the event of an equal number of votes, the casting vote belongs to the chairman of the examination committee (Radecki, and Danecka, 2019), which consists of six members:

- a) representative of the Minister of the Environment – as the chairman,
- b) representative of the Polish Hunting Association,
- c) representative of Państwowe Gospodarstwo Leśne Lasy Państwowe (State Forest Enterprise),
- d) expert in the field of environmental protection,
- e) expert in the field of hunting economy,
- f) expert in the field of possession and use of hunting firearms – representative of the Commander in Chief of the Police (Journal of Laws 2005, No. 27, item 230).

Particular attention should be paid to the fact that the performance of economic activity consisting in the provision of tourist services involving hunting is conditioned on clean criminal record of the entrepreneur and the persons managing the entrepreneur's activities, as far as intentional crimes specified in art. 52 and art. 53 of the Hunting Law are concerned. Such crimes include collecting, possessing, manufacturing, storing or marketing tools and devices intended for poaching, hunting in the presence of or with the participation of a child under 18, deliberate obstructing or preventing the performance of hunting, hunting during the closed season or hunting without authorisation. Moreover, the entrepreneur or the person managing the entrepreneur's activity must not have been punished for economic and trade related offences.

Economic activity in the scope of hunting, like any other economic activity, is subject to control. Pursuant to Art. 22b of the Hunting Law Act in conjunction with Art. 47 section 1 of the Entrepreneurs Act, the control authority plans and carries out an inspection at the entrepreneur's premises, having analysed the probability of violating the law as part of the business activity conducted. This analysis includes the identification of areas where the risk of non-compliance is the greatest. However, the very method of carrying out the analysis is determined by the control authority or the superior authority. It is worth pointing out here that Art. 47 section 1 of the Entrepreneurs' Law Act does not apply when the inspection body has a reasonable suspicion of:

- a) threat to life and health,
- b) crime of offence having been committed,
- c) tax crime or offence having been committed,
- d) other breach of a legal prohibition or failure to comply with a legal obligation

– as a result of the pursuit of business activity subject to control.

If non-compliance with the conditions required for running a business consisting in the provision of tourist services involving hunting is determined, the entrepreneur may be punished with an administrative sanction in the form of a ban on performing such an activity. At this point, the legislator provided for a two-stage procedure. First, the voivodeship marshal issues written to the entrepreneur to remedy the infringements within the prescribed period. However, this summons does not take the form of an administrative decision or decision. Only if the entrepreneur fails to remove the infringements within the prescribed period, the voivodeship marshal issues an administrative decision prohibiting the economic activity for a period of 3 years. The decision mentioned above may be appealed against by the entrepreneur to the Local Self-Government Appeals Court and then a complaint may be lodged with the administrative court.

The Hunting Law Act also specifies the obligations of an entrepreneur who trades in live game, game carcasses and their parts. An entrepreneur carrying out economic activity in this area is obliged to keep a purchase register at each venison buying station and to ensure the examination of game and meat in accordance with the provisions on fighting infectious animal diseases, examination of slaughter animals and meat, and the Veterinary Inspection. These obligations do not apply to sales made by lessees and managers of game shooting districts on the territory of the Republic of Poland. Details specifying what the records should contain are established in the regulation of the Minister of the Environment of February 7, 2005, on the records of purchase of live game, game carcasses and their parts (Journal of Laws 2005, No. 27, item 231). It should be noted that, owing to this regulation, it is possible to control the amount of game and its health condition, which is of great importance for determining the annual as well as long-term hunting plans (Pązik and Słomski, 2015).

It deserves attention that there is no legal definition of a venison buying station. It is assumed in the literature that this is a place where shot game animals are kept under hygienic conditions before being transported to the processing plant. The entrepreneur running the venison buying station is obliged to mark the carcasses of: elk, deer, fallow deer, mouflon, roe deer and wild boar immediately after the obtained game is delivered to the buying station (i.e. Journal of Laws 2020, item 67). If an authorisation or a certificate of origin of the game is not presented together with the carcass, the person running the venison buying station shall refuse to accept the game carcass. Furthermore, it is a duty of the person running such a station to issue a document confirming the acceptance of the carcass at the venison buying station to the deliverer, which is a pre-numbered form (Journal of Laws 2005, No. 61, item 548). The task of the entrepreneur is also required to collect such a number of carcasses as is appropriate for their economic transport to the processing plant and to ensure hygienic and refrigerated conditions for keeping the carcasses of game animals (Ziemińska, and Krasnowska, 2007, p. 22).

### **3. Conclusion**

Contemporary hunting penetrates into more and more areas of today's reality. In terms of nature, it is an instrument for maintaining a disturbed balance between individual species of fauna and flora, while in the economic field it is a scope creating a powerful market. The protection of natural resources, including wild animal species, is one of the most important obligations of the state. In accordance with the Constitution, public authorities pursue a policy ensuring ecological safety for the present and future generations. Moreover, public authorities support the actions of citizens aimed at protecting and improving the condition of the environment. It should be emphasized that the values and norms regulating human attitude towards the natural world are extremely important and valuable.

Bearing in mind the common good of nature protection, it is worth considering whether business activity in the field of hunting consisting in the provision of tourist services involving hunting, should not be a regulated activity, subject to entry in an appropriate register. First of all, it should be remembered that hunting and the accompanying use of firearms, must not pose a threat to the safety of citizens.

With regard to entrepreneurs conducting economic activity in the field of trade in live animals and trade in game carcasses and their parts, appropriate control carried out by a competent public administration body is particularly important. The control body should examine carefully whether an entrepreneur provides appropriate examination of game and meat in accordance with the provisions on combating infectious animal diseases, examination of slaughter animals and meat, and the Veterinary Inspection. Moreover, during the control

proceedings, particular attention should be paid to the correctness of purchase records kept by entrepreneurs, in order to eliminate illegal trade in game and meat. It is extremely important for the entrepreneur to ensure proper storage conditions for raw material and to ensure appropriate quality of the products obtained. It is also important to require and enforce knowledge of the principles governing handling of slaughtered game on the part of hunters, because, to a large extent, it is their knowledge and skills which determine the quality of raw material supplied for processing.

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