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Raising and Breeding of Free-Living Animals under Polish Law Based on the Example of Cervids (*Cervidae*)*

The objectives and content of the statutory law relating to the protection of animals were shaped according to human needs, changing in each epoch. Initially, the intention to protect selected animal species was based on religious beliefs,¹ and, later, economic considerations played a significant role. The first orders and prohibitions concerned specific species of animals and were aimed at securing the privileges of rulers – the owners and users of nature.²

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¹ See, e.g. J. Helios, W. Jedlecka, *Zwierzęta w głównych religiach świata*, [in:] *Aspekty prawne, filozoficzne i religijne ochrony roślin i zwierząt – wybrane zagadnienia*, red. J. Helios, W. Jedlecka, A. Ławniczak, Wrocław 2016, pp. 51–72; C. Janik, *Status zwierzęcia w głównych systemach religijnych*, [in:] *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, red. T. Gardocka, A. Gruszczyńska, Toruń 2012, pp. 77–104; J. Woleński, *Podmiotowość zwierząt w aspekcie filozoficznym*, [in:] *Status...*, pp. 11–28.

² King Boleslaw I the Brave banned hunting beavers and appointed guards (known as *bobrownicy*) to watch over them. See K. Bronowska, *Ochrona środowiska w prawodawstwie polskim – rys histo-*

It was not before the early 19th century, when humanitarianism was born in France, that humans discovered animals as an issue requiring legal regulations. Humanitarianism meant the recognition of human dignity, fraternity and equality between people as the highest value. A humanitarian stance required respect for human beings and a desire to spare them suffering. In previous centuries, the value of human life was not very high. And if the value of human life was low, one should not be surprised that – in the light of the widespread opinion that humans were superior to animals – the life of animals was of little value. The spread of the idea of humanitarianism led to a situation in which the reasoning that initially concerned only humans translated into reasoning concerning animals. Today, humanitarianism does not only mean respect for other people and minimizing their suffering, it concerns all living beings and constitutes the axiological foundation for the protection and proper treatment of animals. There is no doubt that animals have been granted the right to effective protection in every aspect, since every animal, whether or not it is free, constitutes an inherent part of the natural environment and bears witness to its richness and diversity to which it contributes. Caring for animals has become not only a legal imperative but also an ethical one.³

Doubts about the legal nature of free-living animals existed long before the principle of dereification appeared in Polish legislation. Judicial decisions took the position that although animals cannot be denied the attribute of material goods, they are not things. The adoption of such an assumption led to the conclusion that neither the state nor any other entity is entitled to property rights to animals. This was justified by the fact that it was not possible to subject a freely living animal to the authority of human beings.⁴ The Supreme Court also questioned the classification of free-living animals as things

ryczny, „Ochrona Środowiska. Przegląd” 2002, Nr 1, p. 46. Piotr Listos, Małgorzata Dylewska, and Magdalena Gryzińska say that in 1420, King Władysław II Jagiełło established, as the first in the history of hunting acts, a period of protection for game. In the Statute of Warta, which confirms the above decision, he justifies it as follows: “because hare hunters used to do considerable damage to poor people by destroying their crops and grains, we order from now on, starting from St. Adalbert’s Day (23 April), until the harvest of winter and summer crops, the cessation of all hunting” (P. Listos, M. Dylewska, M. Gryzińska, *Rys historyczny prawnych aspektów ochrony weterynaryjnej zwierząt w Polsce*, „Przegląd Prawa i Administracji” 2017, Vol. 108, p. 115). For more, see also W. Radecki, *Zarys historii prawnej ochrony przyrody w Polsce*, [in:] *Prawne formy ochrony przyrody*, red. J. Sommer, Warszawa 1990, p. 12ff; A. Samsonowicz, *Łowiectwo w Polsce Piastów i Jagiellonów*, Wrocław 1991, p. 39ff; J. Sobczak, *Ochrona zwierząt w prawie karnym*, [in:] *Status...*, pp. 167–168 and the literature indicated therein; M. Raba, *Karnoprawna ochrona zwierząt łownych*, „Prokuratura i Prawo” 2010, Nr 9, pp. 151–152 and the literature indicated therein.

³ The history of legal regulations concerning humanitarian protection of animals in Poland dates back to the 1920s. On 22 March 1928, the President of the Republic of Poland issued a regulation on the protection of animals (Journal of Laws of 1932, No. 42, item 417, as amended). In Art. 1, the legislator prohibited the abuse of all domestic and domesticated animals and birds, as well as animals and wild birds, fish, amphibians and insects. See A. Habuda, W. Radecki, *Przepisy karne w ustawach o ochronie zwierząt oraz o doświadczeniach na zwierzętach*, „Prokuratura i Prawo” 2008, Nr 5, p. 21.

⁴ M. Goettel, *Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013, pp. 37–39.

and described them as “no one’s material objects (which are not things)”⁵ The dispute as to the legal nature of free-living animals became obsolete due to the unambiguous wording of the aforementioned Art. 1 para. 1 of the Polish Animal Protection Act, but this provision did resolve the essence of the doubts mentioned above.⁶

Art. 4 (21) of the Animal Protection Act of 21 August 1997⁷ defines “free-living (wild) animals” as non-domesticated animals living in conditions which are independent of humans. Undoubtedly, these are both native animals living in the state of natural freedom, as well as foreign animals – e.g. migratory species. Wojciech Radecki divides free-living animals into game, protected species and other wild animals.⁸

The legal protection of free-living animals dates back to antiquity. The first regulations were already in force around 2000 BCE in India, Egypt and Babylonia.⁹ The issue of legal protection of animals in Poland, which is a part of material administrative law, has been regulated in a number of acts. In the context of the protection of free-living animals, the following acts should be mentioned: the Animal Protection Act of 21 August 1997;¹⁰ the Act of 13 October 1995 – Hunting Law;¹¹ the Act of 16 April 2004 on Nature Protection;¹² the Act of 29 June 2007 on the Organisation of Breeding and Reproduction of Farm Animals;¹³ the Act of 22 June 2001 on Genetically Modified Organisms;¹⁴ the Act of 27 April 2001 – Environmental Protection Law;¹⁵ the Veterinary Inspection Act of 29 January 2004;¹⁶ the Act on Animal Health Protection and Combating Infectious Animal Diseases of 11 March 2004;¹⁷ the Act on Medical Establishments for Animals of 18 December 2003;¹⁸ the Act of 13 April

⁵ J.S. Piątowski, [in:] *System prawa cywilnego*, t. 2: *Prawo własności i inne prawa rzeczowe*, red. J. Ignatowicz, Wrocław 1977, pp. 352–353; S. Grzybowski, *System prawa cywilnego*, t. 1: *Część ogólna*, red. S. Grzybowski, Wrocław 1985, p. 462.

⁶ The assumptions of the legal concept of the animal is analysed by Mieczysław Goettel, *op. cit.*, pp. 41–42.

⁷ Journal of Laws of 2019, item 122.

⁸ W. Radecki, *Ustawa o ochronie zwierząt. Komentarz*, Warszawa 2012, p. 31. Łukasz Smaga points out that feral animals are not free-living animals. They cannot be regarded as undomesticated, because becoming feral consists in changing the conditions of life activity to independent from humans. They will continue to be pets or farm animals that have adapted to life in the wild (see idem, *Ochrona humanitarna zwierząt*, Białystok 2010, p. 260).

⁹ A. Przyborowska-Klimczak, *Ochrona przyrody. Studium prawnomiędzynarodowe*, Lublin 2004, p. 35 and the literature indicated therein; G. Grabowska, *Europejskie prawo środowiska*, Warszawa 2001, p. 13.

¹⁰ Journal of Laws of 2013, item 856.

¹¹ Journal of Laws of 2015, item 2168.

¹² Journal of Laws of 2018, item 1614.

¹³ Journal of Laws of 2007, No. 133, item 921.

¹⁴ Journal of Laws of 2007, No. 36, item 233, as amended.

¹⁵ Journal of Laws of 2019, item 1396.

¹⁶ Journal of Laws of 2015, item 1482.

¹⁷ Journal of Laws of 2014, item 29.

¹⁸ Journal of Laws of 2015, item 1047.

2007 on Prevention and Repair of Environmental Damage;¹⁹ the Marine Fishing Act of 19 December 2014;²⁰ and the Inland Fishing Act of 18 April 1985.²¹

The starting point for considerations concerning the status of all animals in the Polish legal system is the Animal Protection Act and, consequently, the adoption of the principle that animals, as living beings, capable of suffering, are not things. Therefore, people owe them respect, protection and care. The Animal Protection Act contains very few provisions applicable to free-living animals – all of them are included in Art. 21, in which the legislator calls for their development and free existence to be ensured, and its implementation seems to consist in human non-interference in the life of such animals.²² The provision of Art. 12 of the Animal Protection Act stipulates that such animals should be bred and raised in such a way so as not to cause bodily damage, injuries or other forms of suffering.

In accordance with Art. 1 of the Hunting Law, hunting is one of the elements of environmental protection. This concept covers both the protection of game and the management of game resources in accordance with the principles of ecology, rational agricultural, forest and fishing management.²³

The scope of protection covers wild game, which includes species listed in the Regulation of the Minister of the Environment of 11 March 2005 on the establishment of a list of wild game species.²⁴ According to Section 1(1), game animals are divided into large game (elk, red deer, sika deer, fallow deer, European roe deer, wild boar and mouflon) and small game (fox, raccoon dog, badger, pine marten, beech marten, American mink, European polecat, raccoon, muskrat, European hare, European rabbit, hazel grouse, pheasant, partridge, greylag goose, bean goose, greater white-fronted goose, mallard, Eurasian teal, common pochard, tufted duck, common wood pigeon, Eurasian woodcock and Eurasian coot).

In addition to the protection of game, the Hunting Law also regulates issues related to the so-called game management.²⁵ Apart from hunting, the basic regulatory and protective institutions of the Hunting Law are, *inter alia*, animal breeding centres. A permit for closed breeding²⁶ and raising²⁷ of game animals which are not farm

¹⁹ Journal of Laws of 2007, No. 75, item 493, as amended.

²⁰ Journal of Laws of 2015, item 222.

²¹ Journal of Laws of 2015, item 652.

²² Ł. Smaga, *op. cit.*, p. 256.

²³ J. Skrocka, A. Szczepański, *Prawo łowieckie. Komentarz*, Warszawa 1998, p. 2.

²⁴ Journal of Laws of 2005, No. 45, item 433.

²⁵ Ł. Smaga, *op. cit.*, pp. 255–256.

²⁶ The legal definition of animal breeding (Art. 2(4) on the organisation of breeding and reproduction of farm animals) states that it is a set of measures aimed at improving the hereditary bases (genotype) of farm animals, including the assessment of the value in use and breeding of farm animals, selection and choice of individuals for mating carried out under conditions of proper breeding. Animal breeding, in contrast to animal raising, leads to changes in the frequency of genes and genotypes in the herd. S. Mroczkowski, A. Frieske, *Regulacje użytkowania zwierząt*, Bydgoszcz 2016, p. 38.

²⁷ The provision of Art. 2 of the Act on the Organisation of Breeding and of Farm Animals defines “animal raising” as a set of human efforts aimed at full use of genotypic values of animals in order

animals is issued by the minister in charge of the environment. Such centres may be run by State Forest Enterprises, State Forests, the Polish Hunting Association as well as scientific and educational institutions and other units which, until the entry into force of the Law, ran such centres; and only for the purpose of scientific research and education as well as the settlement or export of live animals.²⁸

In 2001, due to the need to adapt the national legal regulations to the requirements of the European Union, an amendment was introduced to the whole package of acts in the field of veterinary medicine and animal husbandry. As a result of the amendments, farming of free-living animals was granted the status of the farming of stock and slaughter animals. Therefore, it is possible to establish animal farms for commercial production of meat and hides without the obligation to obtain any special permits.²⁹

The farming of free-living animals for the production of meat and hides is made possible by the provisions of the Act on the Organisation of Breeding and on the Reproduction of Farm Animals. Breeding of cervids is a commercial agricultural activity that does not require special permits. According to the provisions of the Act, deer and fallow deer kept under the above conditions are classified as farm animals and are the property of the breeder, provided that they were acquired legally. This provision made it possible to slaughter cervids kept on farms all year round.³⁰

Detailed regulations concerning the conditions of keeping farm deer and fallow deer are provided for in the Regulation of the Minister of Agriculture and Rural Development of 13 September 2004 on detailed veterinary requirements for raising or breeding of wild animals kept by people as farm animals,³¹ and the minimum requirements for the farming of cervids are specified in the Regulation of the Minister of Agriculture and Rural Development of 28 June 2010 on minimum conditions of

to obtain specific products from them (e.g. milk, eggs, wool, meat). The scope of breeding includes maintenance, care, reproduction, use, nutrition and rearing young animals. S. Mroczkowski, A. Frieske, *Prawna ochrona zwierząt gospodarskich*, Bydgoszcz 2015, p. 9. See also L. Zimny, *Mały leksykon rolniczy*, Warszawa 1995, p. 21, 41; cited after W. Radecki, *op. cit.*, p. 110.

²⁸ S. Mroczkowski, A. Frieske, *Prawna ochrona zwierząt wolno żyjących*, Warszawa 2017, p. 124. For more, see, e.g. *Chów i hodowla fermowa jeleniowatych*, red. P. Janiszewski, Olsztyn 2014, pp. 51–57; *Fermowy chów jeleni i danieli*, red. A. Karpowicz, Karniowice 2012, pp. 21–24.

²⁹ B. Borys, Z. Bogdaszewska, M. Bogdaszewski, *Dynamiczny wzrost fermowej hodowli danieli i jeleni w Polsce*, „Wiadomości Zootechniczne” 2012, Vol. 50(1), p. 32.

³⁰ Therefore, cervids kept on farms are not subject to the Regulation of the Minister for the Environment of 16 March 2005 on the determination of hunting periods for game (Journal of Laws of 2005, No. 48, item 459).

³¹ Journal of Laws of 2004, No. 215, items 2187 and 2188. The Regulation mainly sets out the conditions to be met by livestock buildings. The housing and equipment should be dry and have a surface appropriate to the species of animals kept, constructed of materials that are harmless to the animals and are easy to clean and disinfect, with no sharp edges that could cause injury to the animals; watering and feeding equipment should be designed in such a way as to minimize the possibility of the contamination of water or fodder and to ensure that animals have conflict-free access to it.

keeping farm animals species other than those for which the standards of protection were specified in the European Union regulations.³²

According to Bronisław Borys, Zofia Bogdaszewska and Marek Bogdaszewski, the growing popularity of free-living animals farming is caused, *inter alia*, by the increasing demand for game in Europe, considerably exceeding the potential to acquire it from wild populations; the high health quality and the highest culinary attractiveness of the meat resulting from ecological condition of raising the animals; the possibility of the economically effective use of weaker soils, which are not suitable for more intensive cultivation; increasing affluence of the Polish society, creating opportunities for the development of the domestic market and sale of meat at satisfactory prices and proximity to the largest and most absorptive German market; extensive (very often ecological) nature of the production.³³

The commercial significance is mainly due to the breeding of two species of cervids: the fallow deer and the deer. Increasingly popular, especially in park farming, hobby farming and on agritourism farms, is maintaining exotic ruminant species, such as mouflon, alpacas and reindeer. However, these species are not covered by the provisions of the Act on the Organisation and Breeding of Farm Animals. Their maintenance requires the application of other provisions, e.g. on the nature protection, the functioning of zoos or the introduction of alien species.³⁴

The provisions of the Regulation on Minimum Conditions for Keeping Farm Animal Species other than those for which standards of protection are laid down in the European Union legislation relate to facilities, equipment and the maintenance of the animals themselves. A farm where deer or fallow deer are kept should be equipped with a pen enabling veterinary or zootechnical treatments (the so-called manipulation pen). The pen is used to perform all procedures on animals (marking, deworming, weighing, cutting antlers, collecting blood, etc.), segregating (weaning calves) and catching them. The pen must consist of a system of corridors (tunnels), doors and movable (sliding) walls making it possible to direct the animals properly and to separate individual animals at the right time.³⁵

In addition, animals kept in an open system should be protected from adverse weather conditions and predatory animals; they should be able to use shady areas and have permanent access to pastureland of not less than 1 ha during the grazing period; they should have permanent access to fresh and clean water. If the accommodation for animals does not have natural water sources, it should be provided to the animals by the installation of troughs.

³² Journal of Laws of 2010, No. 116, item 778.

³³ B. Borys, Z. Bogdaszewska, M. Bogdaszewski, *op. cit.*, p. 33.

³⁴ *Ibidem*, p. 34.

³⁵ A. Karpowicz, *op. cit.*, p. 14.

Where deer are kept, the stocking density per hectare of pastureland must not exceed 7 deer or 15 fallow deer. The number of animals depends mainly on the quality and productivity of the pasture sward, which depends on the class of soil, rainfall, fertilization, number of plots, etc. The number of deer kept should amount to not more than 7 and the number of fallow deer no more than 15. In the case of poorer pastures, the stocking density should not exceed 3 deer and 5 fallow deer per hectare. The pasture area is protected by a permanent and durable fence at least 2 m high, made of mesh, which prevents animals from getting out. The minimum size of a pen, regardless of the number of animals, should be 1 ha. Pastures are divided into plots of about 3–5 ha, connected either by gates with a width of 3.6 m or driving corridors. In the event of disease or quarantine and outside the grazing period, the regulations allow deer or fallow deer to be temporarily kept in a closed system, in stalls, individually or in groups. The regulation precisely defines the surface area of a stall per unit. Stocking densities exceeding the established area standards for a given species age and physiological status are prohibited. It is forbidden to import animal products obtained from animals which were bred or raised in violation of the provisions of this Act.

The slaughter regulations, which allow shooting animals on a farm where farm deer and farm fallow deer were kept, are very important for the breeders.³⁶ The condition is that the approval of the district (*powiat*) veterinarian is obtained. The decision to allow animals to be shot on the farm is issued on the basis of the provisions of the Act on Veterinary Inspection³⁷ and the Regulation of the European Community laying down specific hygiene rules for food of animal origin.³⁸

According to the Act on the Protection of Animal Health and Combating Communicable Diseases,³⁹ deer and fallow deer kept in farm conditions are classified as slaughter animals. The owner of the herd is obliged to inform the veterinary services about the suspicion of a communicable disease. The regulations also specify the issues concerning the compensation to be paid to the breeder for the loss resulting from the need to carry out sanitary slaughter or loss as a result of treatments ordered by the decision of the Veterinary Inspection. The compensation is granted from the state budget and is equal to the market value of the animal. Another provision of the Act on the Protection of Animal Health and Combating Communicable Animal Diseases requires notification of a farm (in writing) at least 30 days before its commencement

³⁶ See, e.g. B. Dzierżyński-Cybulko, B. Fruziński, *Dziczyzna jako źródło żywności. Wartość żywieniowa i przetwórcza*, Warszawa 1997.

³⁷ Act on Veterinary Inspection of 29 January 2004 (Journal of Laws of 2010, No. 112, item 744, as amended).

³⁸ Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, Official Journal L 139 of 30 April 2004, p. 55.

³⁹ Act on the Protection of Animal Health and Combating Communicable Infectious Diseases of 11 March 2004 (Journal of Laws of 2004, No. 69, item 625, as amended).

and informing the Veterinary Inspection about the suspension of the activity 7 days after its cessation. The farm is registered, numbered and supervised by a district (*powiat*) veterinarian. The principles of humanitarian protection apply to all forms of use and exploitation of free-living animals. Compliance with these principles is of paramount importance.

All over the world, including Poland, farming of cervids is developing dynamically. The first farm was established in 1956 at a Research Station of the State Academy of Sciences in Popielno for research purposes; and the first commercial farm – in 1986. It still functions today as a Research Station of the Polish Academy of Sciences.⁴⁰ Cervid farms are considered to be highly ecological forms of production, based on keeping animals in pastures. They offer the possibility of using areas that are not attractive for agriculture (lower class land, set-aside land or hilly areas), conducting multidirectional breeding (milk, meat, hides, antlers and musk), allowing healthy animals to be allocated to natural hunting ground. Cervid farms have a chance to maintain full animal welfare through extensive grazing, natural production cycles and feeding animals exclusively with fodder produced in the farm. In addition, cervids grazing on grassland contribute to landscape protection and the preservation of grassland ecosystems. They also do not degrade or burden the natural environment.

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⁴⁰ B. Dmochowski, A. Krzywiński, *Hodowla fermowa jeleniowatych – światowe trendy a sytuacja w Polsce*, „Przegląd Hodowlany” 1997, Nr 4, pp. 17–18.

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Abstract: The principles of humanitarian protection apply to all forms of use and exploitation of animals, including free-living animals. The basic regulatory and protective institutions of the Hunting Law include, *inter alia*, the creation and maintenance of animal breeding centres. In 2001, due to the need to adapt Polish national legal regulations to the requirements of the European Union, the entire package of acts in the field of veterinary medicine and zootechnics was amended. As a result of the amendments, farming of free-living animals was granted the status of farming stock and slaughter animals. This made it possible to establish animal farms for commercial production of meat and hides without the obligation to obtain special permits. All over the world, including Poland, farming of wild animals, especially cervids, is developing dynamically. Cervid farms have a chance to maintain full animal welfare through extensive grazing, natural production cycles and feeding animals exclusively with fodder produced in the farm.

Keywords: wild animals; livestock farming; animal protection; hunting