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Hunting Organizations vs the Ministry of Ecology and Natural Resources of Ukraine towards the Issue of Enlisting of the European Elk in the Red Data Book of Ukraine

Introduction

The wildlife is an integral component of environmental and biological diversity on the Earth. It is a renewable and protected natural resource that requires rational use. The Preamble to the Law of Ukraine on Wildlife of 13 December 2001, states that the fauna is a national wealth of Ukraine. In the interests of the present and future generations, measures are taken on protection, scientifically grounded and inexhaustible use and reproduction of wildlife in Ukraine.¹ According to Art. 1 of this Law, one of the tasks of the Ukrainian legislation on wildlife is to ensure conditions for the conservation of all species and population diversity of animals.

Conservation of wildlife, conservation of biological diversity, and conservation work is one of the main priorities of state policy in the field of environmental protection and rational use of natural resources in Ukraine. Thus, the Basic State Policy Directions of Ukraine in the Field of Environmental Protection, Natural Resources Use and Provision of Environmental Safety, approved by the Decree of the Verkhovna

¹ Law of Ukraine of 13 December 2001 on Wildlife (Official Bulletin of Ukraine of 2002, No. 2, item 47, as amended).

Rada of 5 March 1998, provide, in particular, development and implementation of state, regional and interstate programs on protection, use and reproduction of fauna and flora species that are threatened with extinction due to the negative impact of business activity (para. 31).²

According to the Law of Ukraine on the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030, one of the tasks in course of ensuring sustainable development of the natural resource potential of Ukraine is reduction of the loss of biological diversity, conservation and restoration of natural fauna species, animals habitats, rare and endangered fauna species to be protected (section III).³

The Concept of the National Program for Conservation of Biodiversity 2005–2025⁴ states that biodiversity is the Ukrainian national wealth, and its conservation and sustainable use is one of the priorities of the state policy in the field of use of nature, environmental safety and protection, as well as an indispensable condition for its improvement and environmentally balanced socio-economic development. The current state of biodiversity in Ukraine is a subject of great concern for specialists and requires drastic action. In Europe, Ukraine is second only to France in terms of biodiversity and it entails its high responsibility on conservation of such biodiversity. Conservation of biodiversity is one of the decisive conditions for preserving the identity of a nation and may become a factor that will determine near future of the state.

At the same time, the loss of a particular species of plant, animal and mycobiota in one country is a loss for the entire biosphere as a global ecosystem. Therefore, the problem of biodiversity conservation is becoming of global biosphere importance nowadays as it concerns further evolution of the entire organic world. The protection of flora, fauna and mycobiota diversity is the key to normal functioning of natural ecosystems and the sustainable use of renewable natural resources, which will contribute to the sustainable development of society.

Nowadays humankind has fundamentally changed ecosystems, while the animal world is very sensitive to any changes of natural factors and serves as an indicator of the anthropogenic impact on the environment in modern technogenic world. Any abrupt changes are unfavorable for animals that have adapted to certain conditions

² The Basic State Policy Directions of Ukraine in the Field of Environmental Protection, Natural Resources Use and Provision of Environmental Safety: Decree of the Verkhovna Rada of Ukraine of 5 March 1998, No. 188/98-VR (Bulletin of the Verkhovna Rada of Ukraine of 1998, No. 38, item 248).

³ Law of Ukraine of 28 February 2019 on the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030 (Official Bulletin of Ukraine of 2019, No. 28, item 980).

⁴ On Approval of the Concept of the National Program for Conservation of Biodiversity for 2005–2025: Order of the Cabinet of Ministers of Ukraine of 22 September 2004, No. 675-p (Official Bulletin of Ukraine of 2004, No. 38, item 2524).

over the millennia, and they either disappear completely or become rare and extinct. In particular, the fact that the total number of ungulates and fur game animals in Ukraine continues to decline, was noted in the Fifth National Report of Ukraine on the Convention on Biological Diversity of Ukraine issued by the Ministry of Ecology and Natural Resources in 2015.

According to scholars in ecology, poaching, predators, climate change and other factors influence the process of reducing the elk population, but hunting is the main reason for the elk extinction.⁵ Meat and elk horns are objects of commercial interest and, therefore, the population of elk may be significantly reduced if the state does not control hunting.

One of the traditional species of the European forest zone is the European elk. It inhabits the forest-steppe and north of the steppe zone. The elk protection in most countries is provided via management and control tools, in particular, by setting hunting limits. In Ukraine, since 1991, there has been a sharp decrease in the elk population: officially, there were 14,796 elk in 1991, and only 4,396 in 2006. Thus, the elk disappeared completely in the Zaporozhye, Nikolaev, Kherson, Ivano-Frankivsk, Transcarpathian, Chernivtsi regions and the Crimea. As ecologists suggest, poaching, predators, climate change and other factors influence the process of reducing the elk population, but hunting is the main reason for its extinction.⁶ Meat and horns of the European elk are objects of commercial interest and, therefore, the elk population may be significantly reduced if the state does not control hunting.

The circumstances of the case

According to the Institute of Zoology of the Academy of Sciences of Ukraine, the European elk population in Ukraine is now less than 2,000 head. As a result, on 6 December 2016, one National Deputy of Ukraine submitted a statement to the Minister of Ecology and Natural Resources of Ukraine⁷ on taking urgent measures to protect the European elk by imposing a ban on the elk hunting for a period of 25 years .

On 3 February 2017, the Ministry of Ecology and Natural Resources of Ukraine (hereinafter referred to as the Ministry of Ecology) issued an order No. 41 on the Prohibition of Hunting the European Elk, which established a ban on hunting the European elk (*Alces alces*) in the territory of Ukraine for a period of 25 years in order

⁵ I. Parnikoza, *Zaboronyty polyuvannya na losya v Ukraini!* [Prohibit the Elk Hunting in Ukraine!], <https://h.ua/story/434280/> [access: 04.11.2019].

⁶ *Ibidem*.

⁷ The Address of the People's Deputy of Ukraine I.V. Lutsenko of 6 December 2016, Public Association "Ukrainian Hunting Union", https://gsvms.org.ua/files/elk/LystLuc_compressed.pdf [access: 04.11.2019].

to ensure the conservation and restoration of its population. The basis for this decision was scientific evidence that the elk population in Ukraine had been rapidly declining.

In addition, when deciding whether to issue a moratorium on hunting, the Ministry of Ecology took into account Poland's experience in imposing a lengthy ban on the elk hunting,⁸ which has become the truly effective mean of increasing its population. Thus, in Poland, by introducing over the 8 years of the hunting moratorium, the number of elk has more than tripled and stands at over 30,000 head now. The decision of the Ministry of Ecology was met with sharp rejection and active resistance of the hunters who started an active public campaign aimed at its abolition.

Subsequently, on 19 December 2017, despite the active resistance of the hunting lobby, as a result of the submission of the National Commission for the Red Data Book of Ukraine, the Ministry of Ecology introduced the elk to the Red Data Book of Ukraine by issuing an order on Amendments to the List of Species of Animals Listed in the Red Data Book of Ukraine (Fauna).⁹ The European elk has been classified as "vulnerable" one.

Hunting organizations continued to campaign against the efforts of environmentalists to save the European elk from total extinction. Hunters argued that the findings on the number of elk are not documented and inaccurate, and that the elk population is much larger in fact. The Association of Hunting Area Users has applied to the police for a scientist who is the author of expert opinion for the Institute of Zoology of the Academy of Sciences, accusing him of "official forgery". As a result, the orders to ban hunting and bring elk to the Red Data Book of Ukraine were challenged by the hunters in the administrative court as unlawful ones.

During this period, hunters have filed several lawsuits, but the primary one was the administrative lawsuit of one individual hunter, concerning the recognition of illegal orders of the Ministry of Ecology regarding the ban on elk hunting and enlisting the European elk in the Red Data Book of Ukraine. Such a case was decided in the courts of Ukraine for the first time. During the hearing of this case in the Kyiv District Administrative Court, there were public demonstrations of environmental activists and hunters near the court, which turned into fights with injuries to the participants. Hunting associations led a dirty information campaign, called the elk protection "ecopsychosis", and well-known activists were described as "eco-terrorists".¹⁰ For two years, the Ukrainian society has been concerned to note the results of administrative court proceedings on hunters' appeal against the orders of the Ministry of Ecology

⁸ The Decree of the Minister for the Environment of 10 April 2001 (Journal of Laws of 2001, No. 43, item 488, pp. 3049–3050).

⁹ On Amendments to the List of Species of Animals to be Listed in the Red Data Book of Ukraine (Fauna): Order No. 481 of the Ministry of Ecology and Natural Resources of 19 December 2017 (Official Journal of Ukraine of 2018, No. 5, item 216).

¹⁰ S. Androsyuk, T. Telichko, *Ekopsykhos* [Ecopsychosis], "Forest and Hunting Journal", <https://ekoinform.com.ua/?p=3462> [access: 04.11.2019] (in Ukrainian).

and Natural Resources of Ukraine on imposing a ban on European elk hunting and entering this animal into the Red Data Book of Ukraine.

On 27 November 2018, the hunters' claim was upheld by the Kyiv District Administrative Court.¹¹ This court decision appeared on the front pages of most information sources. The Minister of Ecology of Ukraine of that time, Ostap Semerak, said in an interview that he was "surprised by the aggression of some Ukrainian citizens who are trying to win the right to kill animals through the courts".¹² The Ministry has filed an appeal to which activists and environmental NGOs have joined. The case was also considered in cassation by the Supreme Court of Ukraine. On 8 April 2019, the Administrative Court of Appeal cancelled the decision of the first instance. On 2 October 2019,¹³ the Supreme Court of Ukraine finally finished the case and upheld the position of the Ministry of Energy and Environmental Protection of Ukraine,¹⁴ regarding the need to ban European elk hunting and to include it in the Red Data Book of Ukraine, and supported the decision of the Administrative Court of Appeal of 8 April 2019.¹⁵

The main argument of the lawsuit and, accordingly, the decision of the court of first instance, which was not further supported by the courts of appeal and cassation, was that the submission of the National Commission on the Red Data Book of Ukraine had not provided a scientific justification for the need to include the European elk in the Red Data Book of Ukraine, as there was no clear data on amount and dynamics of the population. The submission had contained only general links to population decline, indication of significant chances of its disappearance and references to some scientific publications by certain scholars published in 2010–2013.¹⁶

The Administrative Court of Appeal referred to the term "scientific result", enshrined in Art. 1(22) of the Law of Ukraine on Scientific and Technical Activities of

¹¹ The Kyiv District Administrative Court Judgment of 27 November 2018, case No. 826/9432/17. The Unified State Register of Judgments, <https://www.reyestr.court.gov.ua/Review/387945> [access: 04.11.2019].

¹² *Sud rozhlyane apelyatsiyu Minekolohiyi na skasuvannya zaborony polyuvannya na losya 18 bereznya* [The Court Will Consider the Appeal of the Ministry of Ecology to Lift the Ban on the Elk Hunting on March 18], Interfax Ukraine News Agency, <https://ua.interfax.com.ua/news/general/572681.html> [access: 04.11.2019].

¹³ The Decision of the Sixth Administrative Court of Appeal of 8 April 2019, case No. 826/9432/17 proceeding No. A/855/838/19. The Unified State Register of Judgments, <http://reyestr.court.gov.ua/Review/81430545> [access: 04.11.2019].

¹⁴ The Decree of the Cabinet of Ministers of Ukraine No. 829 of 2 September 2019 – Some Issues of Optimization of the System of Executive Central Bodies – renamed the Ministry of Environment and Natural Resources of Ukraine into the Ministry of Energy and Environmental Protection of Ukraine.

¹⁵ The Decision of the Supreme Court of Ukraine by the Board of Judges of the Administrative Court of Cassation of 2 October 2019, case No. 826/9432/17, proceeding No. K/9901/14908/19. The Unified State Register of Judgments, <http://reyestr.court.gov.ua/Review/84806004> [access: 04.11.2019].

¹⁶ The Kyiv District...

26 November 2015,¹⁷ i.e. new scientific knowledge obtained in the process of fundamental or applied scientific research and recorded on a data storage item. Based on this definition, the Court of Appeal pointed to the error of the court of first instance that the submission of the National Commission on the Red Data Book of Ukraine did not provide adequate scientific justification for reduction of the European elk population in Ukraine.

In this regard, the Supreme Court of Ukraine, composed of the Administrative Court of Cassation panel of judges, stated that the failure to carry out special studies to determine real populations of the European elk “(...) does not indicate the inaccuracy of scientific data taken into account by the National Commission on the Red Data Book of Ukraine”, and that “(...) it has been proven beyond reasonable doubt that the elk is currently a »vulnerable« animal and in the near future such species may be classified as endangered if the factors that adversely affect the status of their populations stay active”.¹⁸

In general, we agree with the findings of the Court of Appeal and the Supreme Courts of Ukraine, but, at the same time, we deem it necessary to pay attention to other environmental-legal aspects of this case that, unfortunately, have not been the subject of thorough analysis by the courts. In particular, such issues are the necessity to outline and substantiate those rights, freedoms and legitimate interests of the plaintiff, defense of which justified his claims for hunting prohibition and including the European elk in the Red Data Book of Ukraine, as well as an indication of the legal relations regulated by orders of the Ministry of Ecology, which have been appealed against, to which the plaintiff should become a party.

Such a necessity is required by the law, because in accordance with Art. 5 – Right to Apply to Court and Methods of Judicial Protection of the Code of Administrative Judiciary of Ukraine (hereinafter referred to as CAJ) of 15 December 2017¹⁹ – “(...) a person may appeal to the administrative court such a decision, action or inaction of the authority that violates his rights, freedoms or legitimate interests”. In addition, in accordance with Art. 264 CAJ of Ukraine (Peculiarities of Proceedings in Cases of Appeal against Regulations of Executive Bodies, the Verkhovna Rada of the Autonomous Republic of Crimea, Local Self-Government Bodies and Other Authorities), “(...) the right to appeal against a normative legal act is available to the persons that are subject to its application and, consequently, are subjects of legal relations in which this act will be applied”. Thus, the court decision by which the claim was satisfied should have specified which particular legal rights, freedoms and interests of the plaintiff

¹⁷ Law of Ukraine of 26 November 2015 on Scientific and Technical Activities (Official Bulletin of Ukraine of 2016, No. 2, item 4, as amended).

¹⁸ The Decision of the Supreme Court...

¹⁹ Law of Ukraine of 15 December 2017 – Code of Administrative Judiciary of Ukraine (Official Bulletin of Ukraine of 2005, No. 32, item 1918, as amended).

are violated, and party of which specific legal relationship he or she was or should have become, or explain the way in which the orders of the Ministry of Ecology are applicable to the plaintiff.

However, such an argument is absent in both of decisions of the Kyiv District Administrative Court of 27 November 2018, and the Sixth Administrative Court of Appeal of 8 April 2019, respectively. The court stated only that “(...) the rights and interests for which the plaintiff appealed to the court were partially violated” and that “(...) necessary element of violation of any personal right is a change in the state of his subjective rights and obligations, i.e. termination or impossibility of exercising its rights and/or the occurrence of an additional duty”. In addition, the court stated in the definition of such legal relations that “(...) the plaintiff has obtained the ID of hunter NUMBER_1 and is engaged in hunting. Thus, since after adding the European elk to the List of Animal Species included in the Red Data Book of Ukraine (fauna), hunting is prohibited for him, the plaintiff as a hunter is a party to the legal relations to which the order of the defendant [Ministry of Ecology – A.S.] dated 19 December 2017 No. 481 was applied”.

Hunters’ rights in Ukrainian environmental law doctrine

In order to determine the rights the claimant has when it comes to elk hunting, it is necessary to refer to the legislation of Ukraine on wildlife, which provides the rights of subjects regarding the use of wildlife. One of these rights is hunting as a special use of wild animals. Their content and implementation are governed by the Law of Ukraine on Wildlife of 13 December 2001²⁰ and the Law of Ukraine on Hunting Economy and Hunting of 22 February 2000,²¹ which enshrine the rights of subjects in the field of fauna use, where hunting is one of the special kinds of wildlife use.

The wildlife is an integral part of the environment and an independent object of legal protection under Ukrainian law at the same time.²² The Law of Ukraine on Wildlife is the main legislative act that regulates relations in the field of protection, use and reproduction of wildlife objects, preservation and improvement of the habitat of wild animals, ensuring conditions for conservation of all species and population diversity of animals.

According to the Law of Ukraine on Wildlife, hunting is defined as a type of special use of fauna, which is carried out by catching of wild animals and birds, which are

²⁰ Law of Ukraine of 13 December 2001 on Wildlife (Official Bulletin of Ukraine of 2002, No. 2, item 47, as amended).

²¹ Law of Ukraine of 22 February 2000 on Hunting Economy and Hunting (Official Bulletin of Ukraine of 2000, No. 12, item 442, as amended).

²² L.V. Leiba, *Tvarynnyy svit yak ob'yekt pravovoyi okhorony* [The Animal World as an Object of Legal Protection], “Problems of Legality” 2010, No. 112, p. 78 (in Ukrainian).

free in nature or kept in semi-free conditions within the hunting grounds and may be objects of hunting (Art. 21). The right to hunt within the limits of the designated hunting grounds is granted to citizens of Ukraine who have reached the age of 18 and received appropriate documents certifying the right to hunt (Art. 22). Required documents include a hunting license, an annual hunting game check card including violations of hunting rules with a stamp of state duty payment, hunting permits (license, shooting card, etc.), weapon documents, etc. (Art. 23).

The Law of Ukraine on Hunting stipulates that “wild game” means wild animals that may be hunted, and “hunting” is a human activity aimed at tracing, pursuing or killing (hunting) wild animals, which are free in nature or kept in semi-free conditions (Art. 1) under a special license or shooting card. In our opinion, the analysis of these acts does not imply the conclusion that content of subjective right to hunt is related to specific species of animals. The object of hunting in the doctrine of environmental law is defined as a state hunting fund, which refers to animals that are free in nature or are kept in semi-free conditions or in captivity within the area of state hunting farms.²³

The object of this right is all game animals, as the unspecified range of all wild animals species, which are currently classified as such by the state in course of respective procedure. Game animals that are free in nature, and are kept in semi-free conditions or in captivity within the area of state hunting farms, constitute a state hunting fund. The law does not guarantee hunters the right or freedom to obtain specific species of animals (including elk), the right to obtain licenses for a particular wild animal, or the right to request the approval of a certain amount of limits each year, etc.

Another aspect that has been left out of the courts’ attention is the issue of the Ukrainian people’s ownership to wildlife in the whole, proclaimed by the Constitution of Ukraine. Hunters are not the owners of game animals, because according to the Constitution of Ukraine and the Laws of Ukraine, all wild animals, including game animals that are in free in nature on the territory of Ukraine, are objects of property of the Ukrainian people. In accordance with the Constitution and the Law of Ukraine on Hunting, rights of the owner are exercised by state authorities and local self-government on behalf of the Ukrainian people. In other words, the owner of animals is still the Ukrainian people, and its rights are exercised by state authorities and local self-government bodies within the limits defined by the Constitution of Ukraine (Art. 3 of the Law of Ukraine on Hunting). Therefore, the Ministry of Ecology, while inserting the European elk into the Red Data Book of Ukraine for the purpose of its preservation, acted as a representative of the owner of these animals, i.e. the Ukrainian people. It should be noted that the current legislation of Ukraine, while enshrining the

²³ *Ekolohichne pravo Ukrayiny. Akademichnyy kurs* [Environmental Law of Ukraine. Academic Course], red. Yu.S. Shemshuchenko, Kyiv 2005, p. 592 (in Ukrainian); *Ekolohichne pravo* [Environmental Law], red. A.P. Hetman, Kharkiv 2014, p. 277 (in Ukrainian).

powers of state bodies in the field of ecology, does not distinguish specific authority for management (administration) of the Ukrainian people's exercise of property rights regarding natural resources, including wild animals.

In our opinion, the position of the District Administrative Court of Kyiv (courts of the first instance) is not substantiated as well in another aspect. In particular, the court stated that after adding the European elk to the Red Data Book of Ukraine, the plaintiff as a hunter had become a party to the legal relations established by the order of the defendant dated 19 December 2017 No. 481[3]. Such a conclusion contradicts the Law of Ukraine on the Red Book of Ukraine, according to which, special use of objects of the Red Data Book of Ukraine may be carried out in exceptional cases for scientific and breeding purposes only. After adding an animal to the Red Data Book of Ukraine, hunters may not be members of this relationship, accordingly they have no right to file a claim.

Certain additional responsibilities with regard to such animals may be imposed on users of hunting grounds who are obliged to comply with the regime of protection of species of animals included in the Red Book of Ukraine within the boundaries of the assigned territory in accordance with Art. 34 of the Law of Ukraine on the Red Book of Ukraine. Meanwhile, the court decision does not provide information on whether the plaintiff is a user of hunting lands in which the European elk are located. Therefore, it is difficult to agree with this conclusion of the court. However, the higher courts did not consider these circumstances at all. In our opinion, the exclusion of certain species of animals from the state hunting fund may not either deprive the interested persons of their legal right to hunt or limit its scope.

Having supported the position of the Ministry of Ecology regarding the need for legal protection of the European elk, the Supreme Court of Ukraine stated, with regard to the issue of infringement of the plaintiff's legal rights, that the right to hunt is not absolute and may be restricted, and the ban on elk hunting due to its inclusion in the Red Book is in conformity with the law and does not violate the plaintiff's hunting rights. Such findings of the Supreme Court of Ukraine need some clarification, in particular, as to whether the inclusion of a game animal in the Red Data Book of Ukraine may be linked to restrictions on hunting rights.

In accordance with the aforementioned Laws of Ukraine on the use of wildlife, some restrictions may be imposed. For example, the rights of owners of wildlife objects may be restricted in the interests of protecting these objects, the environment and protecting the rights of citizens in the manner prescribed by law (Art. 7 of the Law on Wildlife). Article 28 of this Law provides for the possibility of restricting the use of wildlife objects for scientific, cultural, educational, educational and aesthetic purposes. One should also take into account the provisions of Art. 37 of this Law (Protection of Wildlife), according to which, the establishment of prohibitions and restrictions on the use of wildlife objects is one of the means of their legal protection. Similarly, the legal protection of animals in this Article includes the establishment

of a special regime for the protection of species of animals listed in the Red Data Book of Ukraine.²⁴

In this regard, we would like to point out that the issue of limitation of personal rights in the field of natural resources use, including the right to hunt, has not been sufficiently developed in the Ukrainian environmental law doctrine. In this case, it is an issue whether there are any grounds for stating that the inclusion of the species of fauna or flora in the Red Data Book might be a limitation of subjective rights. The restriction of the right should be distinguished from its violation. In the first case, it is about narrowing the scope of human rights that may be established at the legislative level to ensure more important interests, while the second one is about unlawful infliction of harm to rights, freedoms and legitimate interests.

The legal basis for the restriction of human and citizen rights in Ukraine is established by the Constitution of Ukraine. Pursuant to Art. 64, the constitutional rights and freedoms of a person and citizen shall not be restricted, except in cases stipulated by the Constitution of Ukraine, in particular, in conditions of martial law or state of emergency. The Ukrainian legislation on the use of wildlife provides for the possibility of introducing some restrictions in this area. Thus, the introduction of a wild animal into the Red Book shall not be considered as a restriction on the use of the animal world, since both the first and second ones are independent and legally provided animal protection means.

Conclusions

To summarize, the introduction of wild animals into the Red Book shall not be considered as a violation or restriction of personal right to hunt, since the content of this right does not include the authority to obtain a specific species of wild animals. The object of the right to hunt is the state hunting fund. It should be acknowledged that the issue of determining the subjective right to hunt specific animals, as well as the existence of the relevant freedom or legitimate interest and their legal nature, is debatable and needs further research. In any case, the fact that there is no proper justification of these aspects in the court decision, which satisfied the relevant claim, as well as the decisions of the appellate and cassation courts also lack such justification. Consequently, it does not exclude the possibility of filing similar claims in the future by persons dissatisfied with granting of specific environmental protection to some natural objects, and the grounds for consideration and satisfaction of such claims by the courts.

²⁴ G. Levina, *Pravova pryroda Chervonoyi knyhy Ukrayiny (v konteksti okhorony ridkisnykh vydiv dykykh tvaryn)* [The Legal Nature of the Red Book of Ukraine (in the Context of the Protection of Rare Species of wild Animals)], "Constitutional State" 2016, No. 27, pp. 581–582.

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Abstract: The author reviewed the court decisions regarding hunters appealing against the decisions of the Ukrainian authorities concerning the ban on European elk hunting and the entry of this species in the Red Data Book of Ukraine, which were considered by the Ukrainian courts in 2017–2019. The author emphasizes the problems of application of the environmental legislation of Ukraine, including faunistic one, which contains the principles of protection and conservation of wild fauna, by the administrative courts of Ukraine in proceedings of the respective administrative cases. In particular, the court of first instance, which upheld the claim for unlawfulness of the decision to include the animal in the Red Data Book of Ukraine, had not analyzed the provisions of environmental legislation regarding the content of right to hunt, the ownership to wild animals by the Ukrainian people, the peculiarities of legal relationship where the hunter is a party. The resulting decision was subsequently overturned by the higher courts. The main issue addressed by the author is the subject of hunting rights in Ukraine. Legislation and doctrine do not refer to specific species of wild animals but to all game animals, which constitute the state hunting fund. Therefore, the author concludes that hunters do not have the right to a particular species of wild animals (in this case, the elk), that, accordingly, does not give grounds for claiming the court protection of their right, freedom or legitimate interest via challenging acts of public authorities (in this case, the Ministry of Ecology and Natural Resources of Ukraine).

Keywords: the Red Data Book of Ukraine; legal protection of wildlife; court jurisprudence; faunistic law; European elk; right to hunt

