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Measures for the Protection and Restoration of Game Animals and Their Natural Habitat in Ukrainian Legislation

Introduction

One of the main objectives of modern environmental policy is to ensure sustainable natural resource management. Balanced natural resource management in any country is ensured by its sustainable socio-economic development, i.e. the proper functioning of its entire economic complex, including the hunting industry.

The hunting industry is primarily aimed at a sustainable use of biodiversity, specifically, natural resources for hunting. Such use of game animals and their habitat is achieved by means of sustainable natural resource management. The “chain” of a balanced use of natural resources is as follows: protection – sustainable use – restoration. Measures for protection and restoration play a major role in the system of measures for ensuring a sustainable use of game animals and their habitat. It determines the current relevance and importance of the article chosen for research.

The fundamentals of international, European and Ukrainian legislation on measures for the protection and restoration of game animals and their natural habitat

First and foremost, it should be noted that measures for the protection and restoration of game animals and their natural habitat under Ukrainian legislation have to be studied in the context of the corresponding international and European legislation, including the European Convention for the Protection of Animals during International Transport (1968); Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971); Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973); Convention on the Conservation of Migratory Species of Wild Animals (1979); Convention on the Conservation of European Wildlife and Natural Habitats (1979); Convention on Biological Diversity (1992); Agreement on the Conservation of African-Eurasian Migratory Waterbirds (1995); Pan-European Biological and Landscape Diversity Strategy (1995); Framework Convention on the Protection and Sustainable Development of the Carpathians (2003); Directive 2009/147/EC on the Conservation of Wild Birds; Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora; Guidance Document on Hunting under the “Birds Directive”; European Charter on Hunting and Biodiversity.

In order to analyse the legal nature of measures for the protection and restoration of game animals and their natural habitat, the legislative understanding of the terms “protection”, “conservation”, and “restoration” should be discussed. For instance, it can be concluded from Art. 1 of the Convention on Biological Diversity that measures for protection are somewhat broader, since they are not limited to measures for conservation, and measures for restoration (breeding) are only briefly mentioned in Art. 9 of the Convention on the Conservation of European Wildlife and Natural Habitats and in Art. III of the Convention on the Conservation of Migratory Species of Wild Animals.

It deems necessary to study the provisions of the Law of Ukraine on Fauna, the Law of Ukraine on Hunting Industry and Hunting and other related legislation. Pursuant to Art. 36 (para. 1, 2) of the Law of Ukraine on Fauna, the protection of fauna includes a system of legal, organisational, economic, logistic, educational and other measures aimed at fauna conservation, restoration and use. The protection of fauna requires a comprehensive approach to studying its current state, designing and implementing measures for the conservation and amelioration of ecosystems, fauna being a constituent part of them. As can be seen, the legislative definition of fauna protection also includes measures for fauna restoration. Nevertheless, “fauna restoration” is not introduced into the Law as a separate term.

The Law of Ukraine on Hunting Industry and Hunting contains a separate article on measures both for the protection and restoration of game animals (Art. 27 on Protection and Breeding of Game Animals). Pursuant to Art. 27 (para. 2) of the Law, users of hunting grounds implement a set of biotechnical and other measures to insure the

protection and restoration of game animals, conservation and amelioration of their natural habitat. Art. 1 of the Law defines biotechnical measures as a series of general labor activities aimed at ameliorating the living conditions, breeding and increasing the number of wild animals. The identical definition of biotechnical measures is proposed in Chapter 2 of the Procedure for Maintenance of Hunting Grounds.

Scientific approaches to understanding the nature of measures for the protection and restoration of game animals and their habitat

According to Vladyslav V. Petrov, legal measures for fauna protection have to be classified into those that define the procedure for: 1) protecting natural habitats; 2) conserving the gene pool of animal communities; 3) organising a sustainable use of fauna, regulating the number of animals and their breeding.¹

As regards the first group of measures, Valentyn I. Knysh says that fauna protection is impossible without the protection of natural habitats; therefore, any activity affecting fauna as a result of damage to natural habitats, violation of breeding conditions and disruption to animal migration routes has to be conducted in compliance with fauna protection requirements.² Accordingly, any activity related to the protection, sustainable use and restoration of natural habitats contributes to the protection, sustainable use and restoration of animals. Since hunting grounds are the natural habitat of game animals, activities aimed at ensuring the protection, sustainable use and restoration (management) of hunting grounds are also aimed at ensuring the protection, sustainable use and restoration of game animals.

The second group of legal measures for fauna protection requires the imposition of restrictions and prohibitions on the use of certain animals on a certain territory within a certain time limit.³ This group can include the following measures: a) the formation of the environmental network, establishment of state reserves, *zakaznyks* (protected areas in Ukraine that meet IUCN category IV–VI criteria) and designation of other natural sites and objects subject to special protection; b) the introduction of a special protection regime for the endangered species of the Red List of Ukraine (known as the Red Data Book of Ukraine) and for the species subject to special protection on the

¹ V. Petrov, *Pravovaya ohrana prirody v SSSR* [Legal Protection of Nature in the USSR], Moskva 1984, p. 270.

² V. Knysh, *Administratyvno-pravova okhorona tvarynnoho svitu ta rol militsii u yii zdiisneni* (rukopys kandydatskoi dysertatsii) [The Legal Administrative Protection of Fauna and the Role of the Police in its Provision (manuscript of dissertation for the degree of the Candidate of Sciences)], Kafedra administratyvnoho prava ta protsesu, Kharkivskiy natsionalnyi universytet vnutrishnikh sprav, Kharkiv 2007, p. 40.

³ V. Petrov, *Prirodnoresursovoe pravo i pravovaya ohrana okruzhayushey sredy* [Natural Resources Law and Legal Protection of Environment], Moskva 1988, p. 17.

territories of the Autonomous Republic of the Crimea, oblasts (administrative units in Ukraine), the cities of Kyiv and Sevastopol; c) the development and implementation of programmes (action plans) on the conservation of endangered animal species; d) the breeding of rare and endangered animal species in captivity; e) the creation of gene banks, etc.⁴ Furthermore, some scholars say that animal protection is possible only in nature reserves, but they accommodate only a small part of fauna – rare and endangered animals needed to be protected due to their scientific, historical or other importance. These animals are not used for economic purposes. The majority of fauna is subject to hunting and fishing and used by the state as a source of food provision, industrial, technical, medical raw material and other material valuables. Therefore, it is necessary to introduce regulations on the sustainable use of fauna and its restoration.⁵

The third group of measures consists of legislative acts that define: a) the procedure for hunting game animals, b) the use of living organisms, including animals, as a source of food provision, c) the use of fauna for scientific, educational, cultural and aesthetic purposes. For instance, such measures are aimed at introducing: a) rules and scientifically grounded regulations on the protection, sustainable use and restoration of fauna; b) proscriptions and restrictions on their use; c) scientifically grounded normative guidelines and limits on the use of objects of fauna and requirements for hunting them; d) control over the protection, use and restoration of fauna, etc.⁶

As regards the meaning of the term “fauna protection”, it has to be mentioned that in legal science, legal or any other (economic, technical, etc.) protection always includes measures aimed at resolving three, relatively independent, tasks: 1) to conserve fauna; 2) to ensure its sustainable use; and 3) to contribute to its restoration.⁷

Concerning the restoration of natural resources, Oleg V. Basai defines it as a natural (regulated and non-regulated) or artificial process of increasing stocks of natural resources, renewing their quality.⁸ Liubov D. Nechyporuk says that “restoration” is a characteristic typical of the legal regulation of the sustainable use of fauna. When animals are uncontrollably driven to extinction, the restoration of certain species might be impossible due to disruption to their living conditions. Some species can be lost for-

⁴ L. Leiba, *Problemy y osoblyvosti pravovoho zabezpechennia okhorony tvarynnoho svitu* [Problems and Specifics of Enforceability of Fauna Protection], “Problems of Legality” 2011, Vyp. 113, p. 51.

⁵ R. Gizzatullin, *Pravovaya ohrana zhyvotnogo mira zakonodatelstvom Respubliki Bashkortostan* (rukopis kandidatskoy dissertatsii) [Legal Protection of Fauna in Legislation of the Republic of Bashkortostan (manuscript of dissertation for the degree of the Candidate of Sciences)], Kafedra hozyaystvennogo i finansovogo prava, Bashkirskiy gosudarstvennyy universitet, Ufa 1998, p. 59.

⁶ L. Leiba, *op. cit.*, pp. 51–52.

⁷ V. Knysh, *Shchodo poniattia pravovoi okhorony obektiv tvarynnoho svitu* [On Legal Protection of Fauna], “Law Forum” 2010, No. 1, p. 155.

⁸ O. Basai, *Poniattia vidtvorennia pryrodnykh roslynnykh resursiv* [The Notion of Restoration of Plant Resources], “Current Problems of State and Law” 2011, Vyp. 61, p. 652.

ever.⁹ In order to ensure fauna restoration, the introduction of (compliance with) certain conditions, directly concerned with the protection of animals and their natural habitat, is necessary. The extermination of animals and disruption to their living conditions lead to the extinction of animals and impossibility of their restoration. On the other hand, human activity aimed at fauna protection and restoration contributes to increasing the number of certain animal species.¹⁰

To conclude, the protection of game animals and their natural habitat is a system of legal, economic and organisational measures aimed at the protection, conservation, sustainable use and restoration of game animals and their natural habitat in order to ensure a natural balance in fauna and in the environment in general and to preserve the possibility of their further use.

In this paper, the restoration of game animals and their natural habitat is viewed as one of the measures for their protection aimed at increasing the number and improving the quality of game animals and their natural habitat in order to ensure a natural balance in fauna and the environment in general and to preserve the possibility of their further use. For instance, Knysh, studying the concept of the legal protection of fauna and the related activities of the state authorities and non-government bodies, also refers to them as measures for protection.¹¹

Measures for the protection and restoration of game animals have common goals: 1) ensuring a natural balance in fauna and the environment in general; 2) preserving the possibility of the further use of game animals and their natural habitat and their beneficial characteristics. Evidently, these measures are inextricably linked and mutually complementary. This opinion can be substantiated by illustrating the measures for regulating the number of game animals that can also be aimed at the protection of game animals and their restoration. It also concerns breeding grounds that users are required to designate within hunting grounds. Pursuant to Art. 27 (para. 2) of the Law of Ukraine on Hunting Industry and Hunting, item 1.3 of the Procedure for Designating Territories for Protection and Restoration of Game Animals (Breeding Grounds), these measures are taken with the aim of protecting and restoring game animals; and pursuant to Chapter 6 of the Procedure for Maintenance of Hunting Grounds, they belong to the measures for the economic and technical division of hunting grounds, i.e. to the measures for the protection and restoration of hunting grounds. In the meantime, considering that hunting grounds are the natural habitat of game animals, it has to be noted that any measures to protect and restore hunting

⁹ L. Nechyporuk, *Ekoloho-pravove rehuliuвання ratsionalnoho vykorystannia ob'ektiv tvarynnoho svitu* (rukopys kandydatskoi dysertatsii) [Legal Environmental Regulation of Sustainable Use of Fauna (manuscript of dissertation for the Candidate of Sciences)], *Vidil problem ahrarnoho, zemelnoho ta ekolohichnoho prava*, Instytut derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, Kyiv 2009, p. 57.

¹⁰ V. Kormilitsyin, *Osnovy ekologii* [Fundamentals of Ecology], Moskva 1997, p. 25.

¹¹ V. Knysh, *Shchodo...*, p. 155.

grounds will naturally contribute to protecting and restoring game animals, which is once again substantiated by para. 2. of Art. 27 and Art. 1 of the Law as well as Chapter 1 of the Procedure for Maintenance of Hunting Grounds.

The system of measures for the protection and restoration of game animals and their habitat

It deems necessary to discuss and analyse the system of the measures for the protection and restoration of game animals and their natural habitat in more detail.

1. The maintenance of hunting grounds.

Pursuant to Art. 1 of the Law of Ukraine on Hunting Industry and Hunting and Chapter 1 of the Procedure for Maintenance of Hunting Grounds, the maintenance of hunting grounds is defined as a scientifically grounded assessment and inventory of types of hunting grounds, the species composition, the number and quality of game animals of a certain area or region, the development (with regard to environmental and economic conditions) of the procedure for managing hunting farms and measures for the protection, sustainable use and restoration of game animals, conservation of game animals and improvement of the state of hunting grounds.

The actual procedure for taking the corresponding measures is regulated by Art. 28 of the Law and by the Procedure for Maintenance of Hunting Grounds. Art. 28 of the Law contains provisions regulating the procedure for maintaining hunting grounds. Nevertheless, they are of general character. For instance, para. 1 of Art. 28 states that users are obligated to ensure the maintenance of hunting grounds over the course of two years since the day they had obtained a hunting permit. Pursuant to para. 2 of the Art., the procedure for maintaining hunting grounds is defined by the central executive authority on the forestry and hunting industry (the State Agency of Forest Resources of Ukraine) with the approval of the central executive authority on environmental protection (the Ministry of Ecology and Natural Resources of Ukraine). Para. 3–4 of Art. 28 concern projects on the management and development of the hunting industry. Para. 3 of the Art. stipulates that these projects are approved by the central executive authority on the forestry and hunting industry, the central executive authority of the Autonomous Republic of the Crimea on environmental protection, the central executive authority of the Autonomous Republic of the Crimea on the forestry and hunting industry and local state administrations in oblasts, in Kyiv and Sevastopol. Para. 4 of the Art. states that such projects, developed in accordance with the existing requirements at the time of their implementation, are considered valid until their expiry, provided that the land area and boundaries of hunting grounds had not changed.

The Procedure for Maintenance of Hunting Grounds stipulates the main regulatory standards required for a scientifically grounded assessment and inventory of types of

hunting grounds, the species composition, number and quality of game animals, the development (in accordance with environmental and economic conditions) of the action plan for managing hunting grounds and measures for the protection, sustainable use and restoration of game animals, conservation and improvement of hunting grounds. Analysis of the provisions of the Procedure allowed to outline the following measures: 1) the introduction of the categories of the complexity of maintenance work on hunting grounds – of which there are four (I, II, III, IV) – depending on the level of the hunting industry management and a quality assessment of hunting grounds (Chapter 4 of the Procedure); 2) forestry and hunting zoning – Ukraine's hunting grounds are situated within Ukraine's 5 terrestrial ecosystems (Chapter 5 of the Procedure); 3) the economic and technical division of hunting grounds – the provider together with the user of hunting grounds devise a schematic plan of the territory, designate the boundaries of breeding grounds, gamekeeper's rounds, places for installing notices, signposts, tracks, hairpin turns (for mountainous areas), access roads, bridges, quays, log roads, huts, towers for observation and selective culls, base camps, hunter's huts, enclosures, watering places, etc. (Chapter 6 of the Procedure); 4) the definition of the optimal density of game animals (Chapter 11 of the Procedure); 5) the assessment of the influence of various factors on the state of the population of game animals (Chapter 12 of the Procedure); 6) the calculation of an annual increase in the number of game animals (Chapter 13 of the Procedure); 7) the implementation of guidelines for hunting game animals (Chapter 14 of the Procedure).

The Procedure for Maintenance of Hunting Grounds stipulates that it is to be done once in 15 years, but during this period hunting grounds might undergo significant changes influencing the average productivity of every species of game fauna, calculated during a period of the maintenance of hunting grounds, especially in the forest. Therefore, environmental conditions require maintenance periods to be more frequent. As Volodymyr V. Ovdiienko rightly said, there is a need to return to the practice of the obligatory maintenance of hunting grounds every 10 years, and for the first maintenance work – setting a 1 year limit.¹²

2. The designation of breeding grounds within hunting grounds.

Para. 1 of Art. 27 of the Law of Ukraine on Hunting Industry and Hunting stipulates that in order to ensure the protection and restoration of game animals, users within the boundaries of their hunting grounds allot no less than 20% of no-hunting territory. The procedure for designating this territory is adopted by the central executive authority on the forestry and hunting industry. Pursuant to item 1.3 of the Procedure

¹² V. Ovdiienko, *Pravove rehuliuвання myslivstva v Ukraini* (rukopys kandydatskoi dysertatsii) [Legal Regulation of Hunting in Ukraine (manuscript of dissertation for the degree of the Candidate of Sciences)], Kafedra ekolohichnoho prava, Natsionalnyi universytet «Iurydychna akademiia Ukrainy imeni Yaroslava Mudroho», Kharkiv 2013, pp. 100–101.

for Designating Territories for the Protection and Restoration of Game Animals (Breeding Grounds), breeding grounds are parts of hunting grounds, designated by the user with the aim of protecting and restoring game animals.

Based on the provisions of Chapter 2 of the Procedure, breeding grounds can be marked by one or several contours (massifs, plots of land, water bodies, etc.) with the total area of no less than 20% within specified hunting grounds. Users of hunting grounds are to take into account migratory behaviours of game animals in order to create breeding grounds shared by two or more hunting farms (item 2.1). Depending on a type of game animals living on hunting grounds, breeding grounds can be designated for one species or a group of species of game animals (item 2.2). Only grounds that are the most conducive to the protection and restoration of one species or a group of species of game animals and have good feeding and protective properties according to the Classification of Hunting Grounds by value categories (forest appraisal index classes), stated by item 7 of the Procedure for Maintenance of Hunting Grounds (item 2.3), are designated as breeding grounds for the period of no less than 3 years. Hunting on the territory of a breeding ground is forbidden. Culling and trapping of predatory animals and vermin are performed in accordance with the provisions of Art. 33 of the Law of Ukraine on Hunting Industry and Hunting (item 2.4). Forestry work or any other type of work performed by owners or users of land plots on the territory of breeding grounds is agreed with the user of breeding grounds (item 2.5). Chapter 3 of the Procedure stipulates that the designation of breeding grounds is agreed with the owner or user of a land plot and finalised by the order of the user of hunting grounds that contains the information about the area of the grounds with a list of zones, landmarks, water bodies, etc. and a detailed description of their boundaries, species or a group of species of game animals for whom they are intended; it defines the policy on the protection of game animals on this territory (item 3.1). The territories of breeding grounds are demarcated by warning signs (item 3.2).

Khrystyna I. Chopko says that the designation within hunting areas of territories where hunting is forbidden as a means of restoring game animals is rather ineffective. For instance, the area of the ground allotted to the restoration of game fauna (breeding grounds) amounts to less than 20% and is sufficient for a natural breeding of partridges, pheasants, mallards but is too small for a normal breeding of such animals as deer, roe deer, wild boars, etc.¹³ According to Anatoliy M. Volokh, this practice is not always effective because territories for breeding are often small, and their protection, considering the distance from hunter's quarters and the poor financial standing of the

¹³ Kh. Chopko, *Ekoloho-pravovi zakhody zi zberezhenia vydovoi ta populiatsiinoi chyselnosti dykykh tvaryn* [Legal Environmental Measures for Conservation of Species and Populations of Wild Animals], "Law and Society" 2013, No. 6-2, p. 181.

hunting sector, is formal. In many countries up to 50% of land is allotted for breeding grounds for a more intensive restoration of hunting resources.¹⁴

3. The establishment of the hunting capacity of hunting grounds.

As stated in the provisions of para. 3 of Art. 27 of the Law of Ukraine on Hunting Industry and Hunting, users of hunting grounds establish the hunting capacity of hunting grounds upon the approval of the central executive authority on the forestry and hunting industry and the local state authorities of the oblasts and the cities of Kyiv and Sevastopol. Furthermore, it has to be noted that the current edition of Art. 1 of the Law does not contain the definition of the hunting capacity of hunting grounds, since it was excluded by the Law of Ukraine of 21 January 2010 No. 1827-VI on Amendments to Certain Laws of Ukraine on Hunting Industry, Hunting and Fishing, Protection, Use and Restoration of Fauna. Before the amendments were introduced, Art. 1 of the Law had defined the hunting capacity as the highest possible number of hunters who can hunt on one day in a certain area of hunting grounds (with regard to the number of game animals and the necessity to take workplace safety measures).

4. The creation of the hunting service.

Pursuant to Art. 29 of the Law of Ukraine on Hunting Industry and Hunting, with the aim of protection, users of hunting grounds establish a hunting service with one professional hunter per 5,000 ha of woodland or 10,000 ha of field or wetland hunting grounds. As regards such regulations, Chopko rightly states that a big area of hunting grounds leads to its formal protection; therefore, scientifically grounded calculations should be made to define the optimal size of hunting grounds for one professional hunter.¹⁵ In the meantime, as Oleg R. Protsiv says, lack of efficient professional protection is one of the reasons for ineffective management of the hunting industry.¹⁶

According to the director of Ivano-Frankivsk Regional Office of Forestry and Hunting Industry, the formation of an efficient hunting service and a guarantee of proper protection of hunting grounds is one of the obligations of every user. Among the causes of a bad organisation of professional security is the unprofitability of the hunting industry that does not allow to attract investments and properly maintain

¹⁴ A. Volokh, *Problemy upravlinnia resursamy myslyvskykh tvaryn v Ukraini* [Problems of Game Animals Management], [in:] *Zbirnyk materialiv II-ho Vseukrainskoho zizdu ekologiv z mizhnarodnoiu uchastiu* [Book of Abstracts of the II All-Ukrainian Environmental Conference with International Participation], http://eco.com.ua/sites/eco.com.ua/files/lib1/konf/2vze/zb_m/0057_zb_m_2VZE.pdf [access: 31.07.2019], pp. 2–3.

¹⁵ Kh. Chopko, *op. cit.*, p. 181.

¹⁶ O. Protsiv, *Analiz zakonodavchoi bazy myslyvskoho hospodarstva krainy ta rozrobka pokrashchenykh propozytsii. Zakliuchnyi zvit v ramkakh vykonannya prohramy ENPI Fleh-II* [Analysis of Ukrainian Legislation on Hunting Industry and Development of Improved Amendments. The Final Report on ENPI FLEG II Programme], Lviv 2014, p. 28.

the hunting service. Therefore, there is a heavy workload for one professional hunter, a low salary, legal insecurity, lack of material incentives paired with a poor technical support of the hunting service (first of all, transport, weapons, communication equipment) that has a negative impact on the protection of the state hunting fund and the prevention of poaching.¹⁷

5. The regulation of the number of game animals.

Pursuant to para. 1 of Art. 32 of the Law of Ukraine on Fauna, in order to ensure public health and safety, to prevent diseases of farm animals and other domestic animals, to avert environmental damage and damage to economic and other types of activities, measures aimed at regulating the number of certain species of wild animals are taken. The regulation of the number of predatory animals and vermin within the procedure for managing the hunting and fishing industry is conducted according to the Law of Ukraine on Hunting Industry and Hunting, other statutory and regulatory acts (para. 4 of Art. 32 of the Law of Ukraine on Fauna).

Pursuant to Art. 1 of the Law of Ukraine on Hunting Industry and Hunting, the regulation of the number of wild animals – the elimination (culls and trapping) of animals who live in the wild, provided that their number in a certain area poses a threat to the lives and health of people and domestic animals, inflicts significant damage on the agricultural, forestry and hunting sectors, disrupts a natural balance of species, endangers the existence of other species of animals. The regulation of the number of animals is conducted on the basis of Art. 33 of the specified Law.

6. Selective and diagnostic culls of game animals for veterinary and sanitary examination.

Art. 32 of the Law of Ukraine on Hunting Industry and Hunting stipulates the procedure for selective and diagnostic culls of game animals for veterinary and sanitary examination that, pursuant to para. 1 of this Art., are performed on hunting grounds irrespective of hunting seasons by employees authorised to provide the protection of hunting grounds by permission of the central executive authority on the forestry and hunting industry upon a written application of the user of hunting grounds.

Based on Art. 1 of the Law of Ukraine on Veterinary Medicine, veterinary and sanitary examination is a series of the required laboratory and specialised tests (virologic, bacteriologic, chemical and toxicological, pathoanatomic, histological, parasitological, radiological) that are conducted by specialists of the State Service of Veterinary Medicine or by commissioned doctors of veterinary medicine on the safety of animal products and plant-based products, on agrofood markets, reproductive material, biological products, veterinary medication, substances, feed additives, premixes and

¹⁷ *Ibidem*, p. 29.

fodder, including analysis of manufacturing technology and equipment for their compliance with veterinary and sanitary regulations.

Pursuant to item 2.1 of the Guidelines on Selective Culls of Game Animals, animals subject to selective culls are sick, injured animals, old animals with clear signs of degradation, two-year-old immature young animals, animals with atypical colouring and animals with undeveloped horns (as regards culls of stags, elks, fallow deer, roe deer). Pursuant to item 2.1 of the Guidelines on Selective Diagnostic Culls of Game Animals for the State Veterinary and Sanitary Examination, diagnostic culls are performed in order to assess an epizootic situation among game animals.

Pursuant to para. 2–4 of Art. 32 of the Law of Ukraine on Hunting Industry and Hunting, culls of game animals in, designated by the animal health office, sites of rabies and other dangerous diseases are performed in accordance with the legislation on veterinary medicine. Selective and diagnostic culls of game animals for veterinary and sanitary examination are conducted with regard to the hunting limits. Animals hunted during a hunting season are considered hunted within the limit of this hunting season, and animals hunted between seasons – as hunted within the limit of the next hunting season.

7. The establishment of limits and proscriptions on hunting.

It stipulates the necessity of rigid compliance by legal persons with the use of hunting resources, hunting seasons (Art. 19 of the Law of Ukraine on Hunting Industry and Hunting), proscriptions on hunting (Art. 20 of the Law).

8. Imposition of limits on the use of game animals.

These limits are defined by Art. 16 of the Law of Ukraine on Hunting Industry and Hunting, the Guidelines for Applying the Procedure for Imposing Limits on the Use of Game Animals Belonging to Natural Resources of National Significance, the Limits on the Use of Game Animals of the State Hunting Fund during a Hunting Season (ratified every hunting season), the Limits on Culls of Other Game Animals of the State Hunting Fund by One Hunter a Day during a Hunting Season (ratified every hunting season).

9. Giving certain hunting grounds the status of hunting grounds of the state hunting reserve.

Based on Art. 1 of the Law of Ukraine on Hunting Industry and Hunting, the hunting grounds of the state hunting reserve include non-private hunting grounds or ones that are no longer private because the right of use was revoked. Nevertheless, measures for their protection and restoration as well as measures for the protection and restoration of game animals living on these hunting grounds continue to be taken by the central executive authority on hunting.

10. The work of the state authorities on hunting (first and foremost – the State Agency of Forest Resources of Ukraine and the State Forest Protection Center) that execute their powers stated in the corresponding provisions (including those connected with the protection and restoration of game animals and their natural habitat) directly or through their local authorities.

11. The establishment of a permit- and contract-based procedure for acquiring the right of the use of game animals and their natural habitat.

12. The mechanism for applying sanctions for violating the legislation on the use of game animals.

13. The introduction of other measures defined by Chapter IV of the Law of Ukraine on Fauna (The Protection of Fauna) and other statutory and regulatory acts, aimed at the protection and restoration of game animals and their natural habitat.

The measures for the protection and restoration of game animals and their natural habitat are a responsibility of the state authorities on hunting and users of hunting grounds. Nevertheless, neither of the parties is interested in performing them. For instance, the hunting policies in Germany are aimed at conserving flora and fauna, economically stimulating the development of hunting with regard to national hunting traditions, taking biotechnical measures in order to eliminate the negative impact of game animals on the agricultural, forestry and fishing sectors, protecting and ameliorating their living conditions. For the most part, the protection of game animals, preparation and laying out of feed are managed by hunters. They systematically monitor the state of hunting grounds that allows to obtain timely information on the population of game animals. In Finland, local hunting clubs are united into hunting associations whose objectives are monitoring game animals, economically stimulating the hunting sector and hunting, consulting and providing legal services for hunters. Local hunting clubs are responsible for managing the hunting sector, taking biotechnical measures, combating poaching, etc. In Sweden and Finland, money from annual fees paid by hunters are allotted to the development of the hunting sector, the protection, sustainable restoration and use of game animals.¹⁸

¹⁸ *Analiz zakonodavchoi bazy i praktyky vedennia myslivskoho hospodarstva deiakykh krain Yevropeiskoho Soiuzu. Publikatsiia v ramkakh prohramy FLEG II* [Analysis of the Legislation and Practice of Managing the Hunting Industry of Some of the EU Countries. Publication as Part of FLEG II Programme], red. M. Myronenko, A.-T. Bashta, R. Novikov ta inshi, Kyiv 2015, pp. 50–51.

The practice of bringing to justice violators of the legislation on the protection and restoration of game animals and their habitat

Legal liability for violations of the legislation in this field provides for the possibility of imposing on the offender: 1) criminal; 2) administrative; 3) disciplinary; 4) civil sanctions.

Concerning the practice of criminal and administrative liability, according to the data published by the Ministry of Ecology and Natural Resources of Ukraine on its official website in the National Report on the State of the Environment in Ukraine in 2012, about 11,000 violators of hunting rules are detained by the police every year. Up to 400,000 game animals are killed annually in Ukraine, causing damage of UAH 50 million. On average, for one hunter, there are five violations of hunting rules per year. For one officially killed roe deer, there are eight of them killed by poachers.

According to the information on the official website of the State Agency of Forest Resources of Ukraine, poaching is one of the most pressing problems faced by Ukraine's hunting industry. In 2015, 3,237 violation reports were filed, of which UAH 589,000 were charged as fines, and UAH 167,000 – as restitution. Administrative action was taken against 3,237 violators of hunting rules, criminal action – against 4 violators.

Analysis of the Unified State Register of Court Rulings in the section on illegal hunting showed that in Ukraine (as of 1 May 2016), there were 32 sentencing rulings regarding this category of cases, 20 of which entered into force. Among the verdicts that entered into force, 11 were issued for violations of hunting rules that caused significant harm (3 of them were also qualified under para. 2 of Art. 248 of the Criminal Code of Ukraine), and 9 concerned illegal hunting in reserves or on other territories of the nature reserve fund.

Pursuant to the corresponding rulings, the following criminal penalties were imposed on the perpetrators: fines (in 13 rulings), community service (in 3 rulings), imprisonment (in 3 rulings), the amount and duration of which were determined by the sanctions in para. 1 and para. 2 of Art. 248 of the Criminal Code of Ukraine. In the meantime, in cases of imprisonment, the court placed the defendants on probation under para. 1 of Art. 75 of the Criminal Code of Ukraine. On 24 December 2010, the Lebedinsky District Court of the Sumy Oblast issued a ruling on Case 1-277/10 to release the offender from criminal liability under Art. 45 of the Criminal Code of Ukraine for active repentance, and the criminal proceedings against him were discontinued under para. 1 of Art. 248 of the Criminal Code of Ukraine. In all the cases investigated, the defendants paid restitution (voluntarily, by a court verdict or by a civil procedure).

In cases of administrative offenses, under Art. 85 of the Code of Administrative Offenses (Violations of the Rules of the Use of Wildlife) in the Ivano-Frankivsk Oblast, 55 court rulings were found in the Unified State Register of Court Rulings, 45 of which entered into force. Para. 2 of Art. 85 of the Code of Administrative Offences was not

violated in any case, i.e. no ruling was found in this category of cases. Cases under para. 1 of Art. 85 of the Code on violations of hunting and game management rules and regulations are considered by the central body of executive power that implements the state policy in the field of hunting (para. 1 of Art. 242 of the Code), the central body of the executive power that implements the state policy on state supervision in the field of environmental protection, sustainable use, restoration and conservation of natural resources (para. 1 of Art. 242-1 of the Code). Accordingly, it is more difficult to study the practice of applying administrative liability measures under para. 1 of Art. 85 of the Code.

The Ivano-Frankivsk Regional Forestry and Hunting Office on its official website provides the following information on the identification of poaching: in 2012 – 183 cases, in 2013 – 195 cases, in 2014 – 160 cases. In 2015, 174 reports were filed in the oblast for violations of hunting rules, 91 of them (52%) – by state forest service officers. Violators were fined UAH 34,200, and UAH 76,000 of damages were calculated. UAH 30,000 were charged as fines, and UAH 16,000 – as restitution. As of 1 June 2016, 30 violation reports were filed against poachers in the oblast, UAH 9,373 were imposed as fines, and fines of UAH 7,996 were collected.

Conclusions

Consequently, there is a necessity to develop a system of incentives for taking measures for the protection and restoration of game animals and their natural habitat in Ukraine, e.g.: 1) to modify the system of identifying and prosecuting violators of regulations on hunting by providing economic incentives (entities and persons involved in the hunting sector have to be the most interested in the protection of game fauna). On the other hand, the size of lawsuits for the damage caused to the hunting sector by illegally hunting game animals and fines for illegal hunting ought to be several times higher (three times higher at a minimum) than the market value of legal hunting;¹⁹ 2) to provide material incentives for workers and users of the hunting sector and local residents who detect violations of hunting regulations; 3) to hold the state-funded contest for the best hunting farm (best professional hunter) in combating poaching, with material incentives for winners;²⁰ 4) to develop a system of implementing and increasing material incentives for employees authorised for the protection of hunting grounds by means of fines and money acquired from selling

¹⁹ *Ibidem*, p. 101.

²⁰ *Proekt modeli reformuvannia i rozvytku myslyvskoho hospodarstva Ukrainy. Publikatsiia v ramkakh prohramy FLEG II* [The Draft Model of Reformation and Development of the Hunting Industry of Ukraine. Publication as Part of FLEG II Programme], red. M. Myronenko, I. Sheremet, O. Protsiv ta inshi, Kyiv 2015, p. 33.

confiscated products and tools of illegal hunting; and to send all other finances to the user based on the site of poaching,²¹ etc.

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²¹ *Ibidem*, p. 213.

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Abstract: The article investigates the legal nature of measures for the protection and restoration of game animals and their natural habitat. The author studies the system of such measures and analyses their content. Based on the analysis, the definition of the protection and restoration of game animals and their natural habitat is suggested. The author discusses the correlation between these measures as well as their role in a sustainable use of game animals and their natural habitat.

Keywords: game animals; hunting grounds; protection; restoration