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International and National Legal Standards for the Protection of Wild Animals

Introduction

Wild animals are inseparable from the natural systems of Earth and have existed ever since the beginning of the *Homo sapiens* species.¹ Human relations with animals can be observed in the centuries-old history, originating from pre-history or from the biblical paradise, where the first people lived in symbiosis and harmony with the surrounding flora and fauna.² However, it must not be forgotten that at the beginning of mankind's history, humans hunted and killed animals in order to obtain food (meat) or to prevent themselves from freezing (heating with animal skin). These behaviors were motivated by the need for the survival of the human species. Nevertheless, this was not always the case, because the evolutionary development of humanity caused animals to be used for various other purposes, including entertainment, thus, resulting in the fact that the relationship between the human species and the world of animals was based

¹ Z. Litwińczuk, *Zwierzęta w życiu człowieka*, „Przegląd Hodowlany” 2013, Nr 5, p. 17.

² G. Rejman, *Ochrona prawna zwierząt*, „Studia Iuridica” 2006, Vol. 46, p. 253.

solely on their domination and command – despite the fact that many philosophical thinkers promoted different ideas concerning the position of animals in the world.³

The perception of animals in terms of their protection began to change around the 17th century. During that period, the first legal regulations were introduced, e.g. prohibiting animal cruelty,⁴ and immediately followed by a number of local and global legal instruments regarding that matter.

The central point of the considerations is to first define what an animal is. In the current legal status there is no legal definition of an animal. Only in Art. 1(1) of the Act of 21 August 1997 on the Protection of Animals⁵ one can find a reference to animals, recognizing them as living beings capable of experiencing pain and suffering (therefore, not being inanimate objects) which humans should respect, protect and care for. This act is therefore relevant to all animals, including wild animals, which are legally called “free-living animals” understood as non-domestic animals living in conditions independent of humans (Art. 4(21) of the Act on the Protection of Animals).

Due to the dynamic civilizational and industrial development, as well as the pollution and degradation of the environment, deterioration of natural habitats, including irreversible changes in ecosystems, and infectious diseases, have a major impact on the life of these animals while also being a threat to them. Due to the fact that the animal world, apart from the floral one, constitutes an essential component of the natural world without which the biological existence of humans would not be possible, it is important to point out that free-living animals are exposed to the activities of humans, such as poaching. These animals are mostly species in danger of extinction, which means that there is a need to protect both them and their natural habitats. For example, the Polish Red List of Threatened Animals, which classifies animals into 7 groups according to their level of endangerment, is an assisting instrument in the protection of wildlife.

The subject of this study are free-living, so-called wild animals. The aim is to present the system of legal protection of wild animals on the international, EU and national levels in the context of threats to their habitats and existence. Due to the wide scope of the aforementioned issue, the attention was focused mainly on the existing legal regulations. The source base for this study are international, EU and national documents.

³ Some people believed that: “Animals are the lesser brothers of the people” (St. Francis of Assisi), “animal souls are the place of rebirth or reincarnation” (Plato, Pythagoreans), while others were of the opinion that animals have a lesser intellect than humans, and therefore must be completely subordinate to humans. See J. Serpell, *W towarzystwie zwierząt. Analiza związków ludzkie – zwierzęta*, Warszawa 1999, p. 169; M. Gabriel-Węglowski, *Przestępstwa przeciwko humanitarnej ochronie zwierząt*, Toruń 2008, p. 24.

⁴ R.D. Ryder, *Animal Revolution: Changing Attitudes Towards Speciesism*, Oxford 2000, p. 49.

⁵ Journal of Laws of 2019, item 122, as amended.

Conventions and other international initiatives regarding the protection of wildlife

International environmental law encompasses all the standards of international law, including norms intended not only to regulate pollution and other damaging effects on the environment, but also those designed to prevent or counteract risks to the environment.⁶ Animal protection under international law has developed on the basis of two directions, namely:

- the first trend was that animals are a living biological resource of the environment, which should be protected for present and future generations,
- the second trend regarded wild animals as living beings capable of experiencing pain and suffering.⁷

These two trends are not mutually exclusive, but are complementary and inter-linked, as can be seen in many international documents.

One of the most important legal acts on the international level is the Universal Declaration of Animal Rights, which was initially conceived and approved at the Third International Meeting on Animal Rights in the 1970s, namely on 21 September 1977 in London by the International Federation for Animal Rights. Nevertheless, it was adopted by UNESCO on 15 October 1978 in Paris, with 2.5 million signatures of members of various animal welfare and protection societies around the world attached to it. The main purpose of this document was to promote the assertion that not only does a person (as a living being) have rights, but that animals also have them (in the moral sense), and that the ignorance or non-recognition of these rights has led, leads and will lead a human towards crimes against nature and animals.⁸ It is beyond doubt that the Preamble to this Act states that an animal has certain subjective rights, and that humans, as living and rational beings, should be respectful and caring for animals. In the literature on the subject, it is emphasized that the aforementioned document does not provide a source of universally binding law, but only ethical postulates, which in some states may become an inspiration for the establishment of legislative norms in this matter. It is also worth mentioning that, with the adoption of the above-men-

⁶ E. Zębek, *Międzynarodowe i krajowe podstawy prawne i bioindykatory (glony) oceny stanu jakości wód powierzchniowych*, [in:] *Odpowiedzialność za środowisko w ujęciu normatywnym*, red. E. Zębek, M. Hejbudzki, Olsztyn 2017, p. 120. See also J. Ciechanowicz-McLean, *Prawo ochrony środowiska jako kompleksowa dziedzina prawa – ustawa organiczna?*, [in:] *Zagadnienia systemowe prawa ochrony środowiska*, red. P. Korzeniowski, Łódź 2015, p. 62.

⁷ M. Kotowska, *Wybrane problemy prawnokarnej ochrony zwierząt. Perspektywa krajowa i międzynarodowa*, [in:] *Kryminologia wobec współczesnych zagrożeń ekologicznych*, red. M. Kotowska, W. Pływaczewski, Olsztyn 2011, p. 98.

⁸ J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005, p. 233. See more M. Perkowski, *Podmiotowość prawa międzynarodowego współczesnego uniwersalizmu w złożonym modelu klasyfikacyjnym*, Białystok 2008, p. 139.

tioned document, the treatment of animals as objects was abandoned, granting them a certain quasi-subjectivity through the so-called dereification.⁹

In the literature, the Universal Declaration of Animal Rights is considered to be a type of constitution that has resulted in the creation of other international legal acts regulating the legal protection of animals, including free-living animals. Of all the acts of international law concerning animal matters, for the purposes of this publication only the act that strictly regulates the legal protection of wildlife must be identified, namely the Berne Convention of 19 September 1979 on the Conservation of European Wildlife and Natural Habitats, which plays a major role in the legal protection of these species under international law.¹⁰ In the Preamble to that Convention, it is emphasized that wild fauna and flora constitute a natural heritage of aesthetic, scientific, cultural, recreational and economic value, which should be preserved for the benefit of future generations. Unfortunately, the number of many species of wild animals is drastically decreasing, which is why it is important to consciously protect their natural habitats. The Convention therefore insists on the need for each government to take into consideration the protection of wildlife in its national programs and plans and to cooperate internationally with regard to the protection of wildlife and migratory species. The main objective of this Convention is to protect and promote the preservation of species of wild fauna and flora and their habitats, in particular of those species and habitats whose conservation requires the cooperation of several states. Particular emphasis is put on the conservation of endangered and dying species, including endangered and dying migratory species (Art. 1 of the Convention on the Conservation of European Wildlife and Natural Habitats). In order to ensure specific protection of wildlife species, the following actions are forbidden: all forms of deliberate capture and keeping and deliberate killing; the deliberate damage to or destruction of breeding or resting sites; the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention; the deliberate destruction or taking of eggs from the wild or keeping these eggs even if empty; the possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognizable part or derivative thereof, where this would contribute to the effectiveness of the provisions of the aforementioned article of the Convention. The following measures and methods are also prohibited:

1) in relation to mammals: snares, live animals used as decoys which are blind or mutilated, tape recorders, electrical devices capable of killing or stunning, artificial

⁹ According to Jan Białocerkiewicz, the subjectivisation of animals does not in any way mean that the *homo sapiens* species is equal to other animal species, nor does it mean that the subject-animal will have and exercise the same rights as man, or that it will be subject to the same obligations as man. See also A. Zbaraszewska, *Przegląd Piśmiennictwa*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2007, Nr 3, p. 257.

¹⁰ Journal of Laws of 1996, No. 58, item 263, as amended.

light sources, mirrors and other dazzling devices, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter, explosives, nets, traps, poison and poisoned or anesthetic bait, gassing or smoking out, semi-automatic and automatic weapons with a magazine capable of holding more than two rounds of ammunition, aircrafts, motor vehicles in motion,

2) in relation to birds: snares, limes, hooks, live birds used as decoys which are blind or mutilated, tape recorders, electrical devices capable of killing or stunning, artificial light sources, mirrors and other dazzling devices, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter, explosives, nets, traps, poison and poisoned or anesthetic bait, gassing or smoking out, semi-automatic and automatic weapons with a magazine capable of holding more than two rounds of ammunition, aircrafts, motor vehicles in motion,

3) for freshwater fish: explosives, firearms, poisons, anesthetics, gassing or smoking out, electricity with alternating current, artificial light sources,

4) for crayfish (Decapoda): explosives, poisons (Art. 6 of Annex IV of the Convention on the Conservation of European Wildlife and Natural Habitats).

Appendix II of the aforementioned Convention contains strictly protected fauna species, while Appendix III contains protected fauna species animals, which should be maintained at an appropriate level, which means that states that have ratified the Convention should take specific measures to ensure that these species will not be included on the list of strictly protected fauna species in the future, e.g. by introducing legal regulations concerning their exploitation or sale, or by setting protection periods for these animals. The provisions of the Berne Convention should be respected by the states ratifying it, although their implementation is overseen by the Standing Committee, which supervises whether the states comply with its provisions, and assists in resolving disputes between the Parties by proposing measures to improve the implementation of the provisions of this legal act.

Legal provisions based on EU law

The Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,¹¹ known as the Habitats Directive, is a valuable initiative of the member states of the European Union regarding the protection of free-living animals.

The priority objective of this Act is to ensure biodiversity through the conservation of natural habitats of wild fauna and flora on the territories of the EU member states (Art. 2 of the directive). This is, in particular, due to the fact that an increasing number of wildlife is in danger on those territories and that the condition of their

¹¹ OJ L 1992, No. 206, p. 7, as amended.

natural habitats leaves much to be desired. The main causes of species extinction and the vanishing of natural habitats include, *inter alia*, the seizure of animal habitats by humans through rapid urbanization, road construction, deforestation, intensification (including chemicalization) of agriculture, forest and fishery management, as well as the pollution originating from agriculture and municipal management.¹² For clarification, it must be mentioned that the member states are not only interested in protecting endangered species of free-living animals (not including those naturally of a minor range on their territories, not endangered or vulnerable in the Western Palaearctic region, or species susceptible to this threat), but also in species of wild fauna which are:

1) of priority importance to which the European Community has a particular responsibility due to the extent of their natural range within its territory,

2) rare, i.e. of small populations which, in the absence of a present risk, may be subject to future risk, or

3) endemic because of the particular value of their habitat and/or the potential impact of their use of these habitats and/or the potential impact of their exploitation on their conservation status.

Wild animals are subject to a sum of interactions that may affect their long-term distribution and their populations within the territory. This situation is determined by the conservation status of the species, which may be considered “appropriate” if data on population changes of the species in question indicate that they maintain themselves over a long period of time as a permanent component of natural habitats; and that the natural range of the species is not decreasing, including in the future, and that there is, and is likely to be, a habitat of a sufficient size to maintain their populations in the long term.¹³

Given the threats posed to certain wildlife, it is essential that measures to protect them are promptly implemented and that they are considered as being of major importance. The aim is to preserve or restore, at favorable conservation status, natural habitats and species of wild fauna and flora, while respecting economic, social and cultural requirements as well as regional and national characteristics. Conversely, the establishment of a system of strict protection for animal species requires measures which, in their natural range, prohibit: first, any form of deliberate capture or killing of specimens of those species in the wild; second, deliberate disturbance of those species, in particular during the period of breeding, rearing, hibernation and migration; third, deliberate destruction or removal of eggs; and fourth, deterioration or destruction of breeding or resting sites. However, such species are subject to prohibitions, e.g. regarding their sale, transport, confinement or exchange (Art. 12 of

¹² M. Szramka, E. Zębek, *Ograniczenia realizacji przedsięwzięć na obszarach Natura 2000*, „Studia Prawnoustrojowe” 2013, Vol. 22, p. 195.

¹³ See Art. 1(i) of the Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 1992, No. 206, p. 7, as amended).

the Habitats Directive). The measures for the protection of species of wild fauna may include, among others, regulations concerning: a) the access to certain properties, b) regulations regarding time periods and/or methods of obtaining specimens, c) the acquisition of specimens, their sale, offers for sale, confinement for sale or transport for sale, and the temporary or local prohibition of the acquisition of specimens from the wild and the exploitation of certain populations; the establishment of a permit or quota system; the application, when specimens are acquired, of rules on hunting and fishing which take into account the preservation of such populations; the breeding of animal species in captivity and the artificial reproduction of plant species, under strictly controlled conditions, in order to reduce the acquisition of specimens of wild species, or the assessment of the effects of the adopted measures.

The Habitats Directive has been supplemented by annexes providing for animal species of importance to the member states that require: 1) the designation of special areas of conservation (SACs) for habitats where protection legislation is in force, 2) strict protection, 3) specific wild collection and exploitation which may be subject to management measures. The Directive, as well as the Convention on the Conservation of European Wildlife and Natural Habitats, provides the same prohibited methods and means of capture, killing and transport of wild animals.

Legal regulations at the national level

Due to the fact that Poland has been a member of the European Union since 1 May 2004, it was obliged to implement the provisions of the Habitats Directive into national legal regulations. As regards national legal regulations governing the protection of free-living animals, one must mention the Act of 21 August 1997 on the Protection of Animals¹⁴ (abbreviated in Polish and hereinafter referred to as u.o.z.), which establishes that free-living animals, so-called wild animals, constitute a national asset and must be ensured with conditions for their development and free existence, except for those which pose an extraordinary threat to life and health or human economy, including hunting economy, it is permissible to take measures aimed at limiting the number of such animals (Art. 22 in conjunction with Art. 33a(1) of u.o.z.). Nevertheless, according to this Act, it is forbidden to take possession of animal carcasses and create their collections.¹⁵ An exception to this is a permit to process animal carcasses only for scientific, didactic or educational purposes. The permit is issued by the marshal of the voivodeship responsible for the location of the production of exhibits, who determines

¹⁴ Journal of Laws of 2019, item 122, as amended.

¹⁵ J. Miłkowska-Rębowska, *Postępowanie ze zwierzętami dziko żyjącymi*, [in:] *Prawo ochrony środowiska*, red. M. Górski, Warszawa 2014, p. 626.

the conditions and method of obtaining animals, and at the same time obtains the opinion of the starost responsible for the location of the acquisition of these animals.

The handling of wild animals contained in the aforementioned act is only a general one, as the handling of particular categories of these animals is regulated by other detailed acts, i.e. the Act of 16 April 2004 on the Protection of the Environment¹⁶ (abbreviated in Polish and hereinafter referred to as u.o.o.p.), the Act of 18 April 1985 on Inland Fishing,¹⁷ the Act of 13 October 1995 on the Hunting Law.¹⁸ In the context of the regulation on the protection of the environment, it consists of the preservation, sustainable use and restoration of resources, creations and components of nature, such as for example:

- wild plants, animals and fungi,
- plants, animals and fungi protected by species preservation,
- migratory animals,
- natural habitats,
- habitats in danger of extinction, rare and protected species of plants, animals and fungi.

The primary objective of this protection is, first of all, to preserve biodiversity, ensure continuity of existence of plant, animal and fungi species, including their habitats, by maintaining or restoring them to proper protection status; to maintain or restore natural habitats to proper protection status, as well as other resources, creations and components of nature; and to maintain ecological processes and stability of ecosystems (Art. 2(2) of u.o.o.p.).

The continuing need to protect wildlife requires species protection, which includes the protection of wild animals, in particular rare or endangered species, as well as preserving genetic diversity. The objective of such protection is to ensure the survival and favourable conservation status of wildlife, of rare, endemic, vulnerable to various threats and endangered species, and of species which are protected under international treaties.¹⁹ This protection is based on the provisions of the Regulation of the Minister of the Environment of 16 December 2016 on the protection of animal species (Journal of Laws of 2016, No. 2183, item 2183)²⁰ defining the species that are subject to:

- 1) strict protection, detailing the species requiring active protection (592 animal species, including the Aesculapius snake, white stork, bittern, European bison),

¹⁶ Journal of Laws of 2018, item 1614, as amended.

¹⁷ Journal of Laws of 2018, item 1476, as amended.

¹⁸ Journal of Laws of 2018, item 2033, as amended.

¹⁹ U. Szymańska, E. Zębek, *Ochrona środowiska jako interdyscyplinarna dziedzina wiedzy*, Olsztyn 2014, p. 184. See Art. 46(2) of the Act of 16 April 2004 on the Protection of the Environment.

²⁰ This is not the first regulation involving species conservation. The first regulation was introduced already in the interwar period, or more precisely in 1935, where the species of turtle was protected, and then in 1938 – the European bison. See more J. Boć, E. Samborska-Boć, *Ochrona gatunkowa zwierząt*, [in:] *Ochrona środowiska*, red. J. Boć, K. Nowacki, E. Samborska-Boć, Kolonia 2008, p. 264.

- 2) partial protection (211 animal species such as grey toad, feral pigeon, otter),
- 3) partial protection, which may be sourced, and the ways of their sourcing (2 animal species, including European beaver and *Helix pomatia*),
- 4) requiring the establishment of protection zones for places of stay, breeding sites or regular occupancy; and the inclusion of prohibitions and exceptions from certain prohibitions for particular species or groups of animal species and ways of protecting species, including the size of protection zones.

Species protection is one of the forms of protecting the environment, and it includes in particular:

- partial protection – protection of animal species allowing for the possibility of population reduction and acquisition of specimens of these species or their parts,
- active protection – applying, if necessary, protective measures to restore the natural state of ecosystems and components of the environment or to preserve natural habitats and habitats of plants, animals or fungi,
- *ex situ* protection – protection of animal species outside their natural habitat and the protection of rocks, fossils and minerals in places of their storage,
- *in situ* protection – protection of animal species and elements of inanimate nature in their natural habitats,
- strict protection – total and permanent abandonment of direct human intervention in the condition of ecosystems, creations and components of environment and in the course of natural processes in the areas under protection, and in the case of species – year-round protection of their members and their development stages.

According to Art. 52 of u.o.o.p., the following prohibitions may be introduced in relation to wild animals of species under protection:

- 1) intentional: killing, mutilation or capture, destruction of eggs, juvenile forms or developmental forms; scaring or disturbance; scaring or disturbance at resting, breeding or rearing sites or feeding sites for migratory or wintering birds; relocation from regular places of stay to other places; deliberate introduction into the natural environment; preventing access to shelters,
- 2) transport,
- 3) rearing or breeding,
- 4) the collection, acquisition, holding, possession or preparation of specimens,
- 5) destroying habitats or places of stay, which are the breeding, rearing, resting, migration or feeding sites,
- 6) destroying, removing or damaging nests, anthills, burrows, lairs, feeding grounds, dams, spawning grounds, wintering grounds or other shelters,
- 7) disposing of, offering for sale, exchange, donation or transport for the purpose of selling specimens,
- 8) transporting specimens from abroad or exporting them abroad,
- 9) photographing, filming or observing, which may cause their scaring or disturbance.

If a situation occurs in which free-living animals become an endangered species not covered by species protection, then the Regional Director for Environmental Protection may issue an order for a definite period of time in the territory of a given voivodeship for the protection of such animals.

As already mentioned, the Polish Red List of Threatened Animals, developed by the Institute of Nature Conservation of the Polish Academy of Sciences in Kraków in cooperation with numerous scientists from all over Poland, is an instrument supporting the protection of wildlife. In this register, the list of animals (extinct – labeled as EX (e.g. aurochs), extinct – EXP (European mink), extremely endangered – CR (Tatra chamois), high risk (in danger of extinction) – VU (Aquatic warbler), lower risk (near danger) – NT (Eurasian lynx), not yet endangered – LC) with their exact description and maps of their location as well as the applied and proposed methods of protection is provided.

Summary

To summarize the argumentation so far, it must be emphasized that wild animals play an extremely important role in the ecosystem. It can be said that they are its essential link, because without them the natural world would not exist, and the interdependencies between organisms would be disturbed. The environment is created by organisms and the proper functioning of this system depends on them through non-antagonistic and antagonistic interdependencies. The extinction of one species has often shown that it leads to an unstable natural balance, or to irreversible changes in the entire ecosystem. Wild animals are often endangered species due to human anthropogenic activity. Therefore, humans as rational beings should take care of every animal species and not only those that satisfy their life needs. In this regard, it should be pointed out that wild animals need to be subject to comprehensive legal protection at international, EU and national level. This is why the issue of the protection of wild animals is reflected in:

- 1) the Universal Declaration of Animal Rights,
 - 2) the Convention of 19 September 1979 on the Conservation of European Wildlife and Natural Habitats,
 - 3) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,
 - 4) the Act of 21 August 1997 on the Protection of Animals,
 - 5) the Act of 16 April 2004 on the Protection of the Environment
- by granting the animals the status of protected species and protecting their habitats, e.g. establishing protected areas (reserves, etc.).

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Abstract: The considerations in this article will focus primarily on wild animals, i.e. free-living animals, so-called non-domesticated animals, exposed to human activities, such as poaching. These animals are mostly endangered species, hence there is a need to protect these animals and their natural habitats. The main aim of the paper is to present the legal protection of wild animals at international, EU and national level in the context of threats to their lives and their living environment. The most important legal acts regarding the protection of these animals and their habitats are the Bern Convention of 1979 and the so-called habitat directive No. 92/43/EEC, which includes endangered, rare and endemic species of special protection. On the other hand, in Polish legislation, these regulations were included primarily in the Act on the Protection of Animals of 1997 and the Act on Protection of the Environment of 2004, taking into account strict and partial protection of the animal species concerned, including *in situ* (e.g. reserves, Natura 2000 sites) and *ex situ* (zoological gardens) protection. An auxiliary instrument in the protection of wild animals is the Polish Red Book of Animals, classifying animals into 7 groups due to their degree of threat.

Keywords: wild animals; endangered species; natural habitats

