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Animal traps - eu and national regulations with specific emphasis on the agreement on international norms of humane animal capture

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Summary: Animal traps have always accompanied man, with whom the primary people organized the first hunts. Along with the development of hunting art, traps gradually gave way to specialized hunting weapons. However, the use of animal traps on a large scale still occurs in countries that are world exporters of fur and skins of wild animals - Canada, Russia and the USA. Driven by expressed in art. 13 TFEU with the principle of animal welfare, the European Union has introduced a number of regulations to ensure humane catches in member countries as well as in third countries exporting skin and fur. The purpose of this article is to analyze the current legal situation in Poland with regard to the implementation of EU legislation on humane trap standards, with particular regard to the obligations contained in the agreement concluded between the European Community, Canada and the Russian Federation on 22 July 1997 - on international humane trapping standards.

Key words: EU, Poland, Russia, Canada, USA, animal welfare, humane animal protection, snare, poaching, animal species protection, hunting, animal traps, hunting, trapping, hunting law.

Pułapki na zwierzęta – prawo unijne i krajowe ze szczególnym uwzględnieniem umowy w sprawie międzynarodowych norm odłowu humanitarnego

Streszczenie: Pułapki na zwierzęta towarzyszyły człowiekowi od zawsze, za ich pomocą ludzie pierwotni organizowali pierwsze polowania. Wraz z rozwojem sztuki łowieckiej pułapki stopniowo ustępowały wyspecjalizowanej broni myśliwskiej. Stosowanie na szeroką skalę pułapek na zwierzęta ma natomiast nadal miejsce w krajach będących światowymi eksporterami futer i skór dziko żyjących zwierząt – Kanadzie, Rosji i USA. Kierując się wyrażoną w art. 13 TFUE zasadą dobrostanu zwierząt², Unia Europejska wprowadziła szereg regulacji

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² „Przy formułowaniu i wykonywaniu polityki rolnej, rybołówstwa i transportu Unii oraz jej polityk dotyczących rynku wewnętrznego, badań i rozwoju technologicznego oraz przestrzeni kosmicznej, Unia i Państwa Członkowskie w pełni uwzględniają wymagania w zakresie dobrostanu zwierząt jako istot zdolnych do odczuwania, przy równoczesnym przestrzeganiu przepisów prawnych i administracyjnych oraz zwyczajów

mających zapewnić humanitarny odłów w krajach członkowskich a także w krajach trzecich eksportujących skóry i futra. Celem tego artykułu jest analiza obecnej sytuacji prawnej w Polsce w odniesieniu do wdrażania przepisów UE dotyczących humanitarnych standardów pułapek ze szczególnym uwzględnieniem zobowiązań zawartych w umowie zawartej między Wspólnotą Europejską, Kanadą i Federacją Rosyjską w dniu 22 lipca 1997 r. – w sprawie międzynarodowych norm odłowu humanitarnego.

Słowa kluczowe: UE, Polska, Rosja, Kanada, USA, dobrostan zwierząt, humanitarna ochrona zwierząt, sidło, kłusownictwo, ochrona gatunkowa zwierząt, polowanie, pułapki na zwierzęta, łowiectwo, traperstwo, prawo łowieckie.

1. Introduction

Animal traps have been used since times immemorial by humans and with their use our ancestors organized their first hunts. In the course of the development of the art of hunting such traps gave way to more sophisticated hunting guns. Today, such devices are used mainly to eliminate harmful predators or prevent property and livestock loss. Traps are also used in managing nature - they are utilized to catch animals in order to protect their lives and health, conduct research over specific species or their reintroduction. Moreover, they are applied in completing certain self-governmental tasks such as catching homeless dogs and cats. Wide application of traps to gain furs and pelts of wild animals takes place in the countries being the world leading exporters of such products - Canada, Russia and the USA. Animal furs gained with the use of traps do not exhibit any ammunition traces and therefore may be used in whole to produce luxurious fur coats, garments and haberdashery products.

The European Union following the rule expressed by art. 13 TFUE³ on animal welfare⁴ has introduced several regulations aimed at providing humane animal capture in their EU member countries as well as third countries that export furs, leather and other products made of wild living animals caught by traps. Besides the above humane premises aimed at saving animals' pain and suffering, these regulations are also dictated by ecological purposes. Traps meant for destination species operate selectively and diminish the risk of accidental catching of such protected species of animals. Joining by Poland of EU and our participation in the joint market obliges the country to adapt its national law to the EU requirements as well as to obey the regulations and decisions concerning the object scope.

The aim of the article is to analyse the current legal situation as regards implementation of EU regulations concerning humane standards of animal traps, contained especially in the following legal acts: Council Regulation (EEC) no 3254/91 dated 4

Państw Członkowskich związanych w szczególności z obyczajami religijnymi, tradycjami kulturowymi i dziedzictwem regionalnym”.

³ Volume of Laws C 326, 26/10/2012 P. 0001 – 0390.

⁴ „While formulating and carrying out of agricultural policy, fishing and transport of the EU as well as its policies concerning the internal market, research and technological development and outer space, the UE and its Members Countries take full account of animal welfare as creatures able to feel with simultaneous meeting of the legal and administrative regulations or customs of the Member Countries connected especially with religious customs, cultural traditions and regional heritage”.

November 1991 banning the use of hunting traps in the EU as well as introducing into the EU countries of furs and other products made of some species of wild animals coming from countries where they are caught with the use of hunting traps or catching methods not meeting international norms of humane animal capture⁵; Council Regulation (EC) no 35/97 dated 10 January 1997 establishing regulations concerning certification of furs and products contained by the Council Regulation (EEC) no 3254/91⁶; Council Decision dated 22 July 1997 concerning the list prescribed in art. 3 par. 1, line two of the regulation (EEC) no 3254/91 and in art. 1 par. 1, let a) of the Commission Regulation (EC) no35/97⁷; Agreement signed between the European Community, Canada and the Russian Federation on 22 July 1997 - on international norms of humane animal catching⁸; Commission Decision dated 14 October 1998 changing the Council Decision no 97/602/WE concerning the list contained in art. 3 par. 1 line two of the regulation (EEC) no 3254/91 and in art. 1 par. 1 let. a) of the Commission regulation (EC) no 35/97⁹.

The aim of the article is also to suggest, on the basis of collected materials, of solutions in accordance with the best practices available and possible to be applied in national dimension as regards all aspects connected with implementing all the above legal acts of humane standards of animal catching, taking into account current state and desirable solutions. The present work deals with traps for mammals as traps for birds and other types of animals are beyond the content of the above mentioned legal acts.

2. State of EU law - general and terminological remarks

2.1. International agreements

The review of legal acts should be started from so called Bern Convention - on the protection of wild European flora and fauna and their habitats passed by the European Council on 19 September 1979. In relation to the species of animals under protection within the Convention, it is forbidden to use “all non-selective methods of catching and killing as well as using all methods that might result in local extinction of a population of such species or some serious damage in their populations, especially the means and methods as mentioned in annex IV”. Annex IV entitled “Forbidden means and methods of killing, catching and other exploitation” forbids, among others, to use snares against mammals and traps “if applied on large scale or non-selective capture or killing”.

The Convention does not define the term of “snares” and “traps”, it is however known that these constitute two different ideas. According to the linguistic definition, a trap has a much wider meaning that comprises various devices meant for capturing

⁵ Volume of Laws L 308, 09/11/1991 P. 0001 – 0004.

⁶ Volume of Laws L 008, 11/01/1997 P. 0002 – 0004.

⁷ Volume of Laws L 242, 04/09/1997 P. 0064 – 0066.

⁸ Volume of Laws L L 042, 14/02/1998 P. 0043 – 0057.

⁹ Volume of Laws L L 286, 23/10/1998 P. 0056 – 0058.

animals, e.g. boxes, cages, trap-doors, snares, clamp traps. “Sidło” [a snare] in Polish is closely associated with a poaching tool that may operate as clamp (loops of wire, plastic or string)¹⁰. The Bern Convention strictly prohibits the use of clamps against all mammals putting it in the first place among the forbidden methods and means.

As the Bern Convention is a regional agreement aimed at protecting the European species of wild flora and fauna, it does not apply to Canada and the USA. As the Russian Federation is a country that is only partially located on the European continent, it is not a party of the Convention therefore using clamps in Russia does not violate the international law¹¹. The European Economic Community ratified the Bern Convention by means of the decision no 82/72/EEC¹².

The Bern Convention was reflected and further expanded in the EU law by adopted ten years later Habitat Directive¹³, being one of the basis sources of nature protection law in the united Europe. In annex IV of the Directive animal capture methods and means were described whose application is forbidden in relation to species contained by protection provisions of the Directive. One should note that the annex VI mentions all forbidden means and methods as contained in annex IV of the Bern Convention, including “traps that do not operate selectively in accordance with their principles and application conditions” - but except snares (!)

2.2. Council Regulation no 3254/91 - so called leghold trap one

According to the terminology of the Council Regulation issued in 1991 no 3254/91 another term connected with animal capture appeared - a leghold trap. According to the definition contained in the Regulation, a leghold trap “is a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal’s limbs, thereby preventing withdrawal of the limb or limbs from the trap” From the definition results that a leghold trap is a special kind of trap operating in an non-selective way.

The above regulation introduced as of 1 January 1995 ban using leghold traps in the Community, although the problem of conditions that allowed traps should meet was left to national legislators.

The commented regulation prohibited import of pelts mde of thirteen mentioned by name species of animals from third countries unless the following conditions are met: valid administrative or statutory banning using leghold traps and conformity of capture methods for the thirteen species mentioned in annex I of the regulation with the humane capture norms agreed at international level.

The ban on trading concerns the following Euro-Asiatic and American

¹⁰ <https://sjp.pwn.pl/sjp/sidlo;2520355.html>

¹¹ See more in M. Micińska-Bojarek, *Umowy międzynarodowe Federacji Rosyjskiej w dziedzinie ochrony środowiska*, „Studia Iuridica Toruniensia” 2016, no 19, p. 196.

¹² Official Volume L 38 z 10.2.1982, p. 1.

¹³ Council Directive 92/43/EEC dated 21 May 1992 on the protection of natural habitats and wild flora and fauna, Official Volume L 206 , 22/07/1992 P. 0007 – 0050.

species of mammals: beaver (*Castor canadensis*), otter (*Lutra canadensis*), coyote (*Canis latrans*), wolf (*Canis lupus*), lynx (*Lynx canadensis*), bobcat (*Felis rufus*), sable (*Martes zibellina*), raccoon (*Procyon lotor*), musk rat (*Ondatra zibethicus*), fisher (*Martes pennanti*), badger (*Taxidea taxus*), marten (*Martes americana*), ermine (*Mustela erminea*). The regulation does not contain derogation clauses concerning ban on using leghold traps. Import and export of furs and fur coats as well as other products made of pelts of the animals listed in the regulation is possible only from those countries that meet the above requirements.

On 10 January 1997 the Commission issued a regulation no 35/97 establishing rules concerning the certification of pelts and products covered by the Council regulation 3254/91¹⁴ by introducing samples of bill of lading documents (forms and certificates). In the same year, by the Council's decision dated 22 July 1997¹⁵ the list of countries was issued from which importing pelts, fur and other products made from animals is allowed as prescribed in the annex of the Council regulation no 3254/91 as they have met the requirements of the said act. The Council's decision lists countries applying humane animal capture as regards the specified species.

2.3. AIHTS Agreement

The regulations that have been in force since 1995 on prohibiting the use of clamp traps in the EU have emphasized the need to establish the norms of humane capture at international level. The leading exporters of furs and pelts i.e. Canada, Russia and the USA have not introduced any analogical regulations in their internal laws. In order to avoid trading furs and pelts of wild animals caught into clamp traps, Canada, Russia and the USA have negotiated with the European Community so called AIHTS agreement (*Agreement on International Humane Trapping Standards*). This agreement from 22 July 1997 on international norms of humane capture of animals was accepted by the Council's decision no 98/142/EC dated 26 January 1998¹⁶ and became effective in July 2008. The final deadline for its implementation expired in July 2016. The USA has not ratified the agreement although it consented to a separate agreement on that issue¹⁷.

AIHTS covers within its scope capturing of animals for nature management purposes, including fighting pests, gaining furs, pelts or meat or capturing mammals for their protection. Its basic aim is to establish humane norms and methods of capture as well as certifying traps meant for catching wild land mammals and land and water mammals as listed in its annex 1.

The list of animals covered by AIHTS is wider than that in the Council regulation no 3254/91 and comprises 19 species of mammals: coyote (*Canis latrans*),

¹⁴ Official Volume L 008, 11/01/1997 P. 0002 – 0004.

¹⁵ Official Volume L 242, 04/09/1997 P. 0064 – 0066.

¹⁶ Official Volume L 042, 14/02/1998 P. 0040 – 0041.

¹⁷ Council Decision 98/487/EC dated 13 July 1998 concerning the international Agreement in the form of an agreed protocol concluded between the USA and EU norms of humane capture, Vol. of Laws L 219 z 7.8.1998, p. 24.

wolf (*Canis lupus*), Canadian beaver (*Castor canadensis*), badger (*Castor fiber*), bobcat (*Felix rufus*), Canadian otter (*Lutra canadensis*), otter (*Lutra lutra*), Canadian lynx (*Lynx canadensis*), lynx (*Lynx lynx*), American marten (*Martes americana*), beech marten (*Martes pennanti*), sable (*Martes zibellina*), forest marten (*Martes martes*), badger (*Meles meles*), ermine (*Mustela erminea*), raccoon dog (*Nyctereutes procyonoides*), musk rat (*Ondatra zibethicus*), raccoon (*Procyon lotor*).

According to the definitions contained in AIHTS, methods of humane capture mean “traps approved by relevant authorities that are in accordance with humane capture methods contained in annex 1 of the Agreement and applicable in the conditions prescribed by their producers”. Traps mean “mechanical devices to capture animals both killing and restraining their movement” (art. 1 AIHTS).

One should at this point turn attention to a serious terminological problem. The above quoted, Polish translation uses the notion of “sidło” [a snare], whereas the English version uses the term “a trap” and not “a snare”. Similarly the Russian version uses the term of a trap (*lowuszka*) and not a snare (*kapkan*). Due to the source of the law, one should rather apply the directives of the purpose-related, pro-community and comparative official understanding than pure linguistic one.

As a result, within the Polish language version, the term of a snare should be interpreted more widely i.e. as a trap and in such a way it will be used in the further part of the article and always when we deal with AIHTS agreement. One should, therefore, differentiate between the term of a snare taken more widely as mentioned in AIHTS from a snare taken literally as illegal device for catching or capturing animals operating as a clamp as mentioned in the Bern Convention and acts on nature protection as well as in the hunting law (as a synonym of other animal catching devices).

In connection with AIHTS implementation the Parties are obliged to provide or receive permissions to use traps, introduce law on humane methods of capture, train hunters as regards humane, safe and effective capture methods, including new methods. They are especially obliged to establish proper procedures as regards trap certification, ensuring that capture methods carried out on their territories are in accordance with the Agreement and prohibit using other traps than those certified. Moreover they require a producer to attach instruction manual of proper setting, safe use and maintenance of such certified trap (art. 7 and 8 AIHTS).

Numerous deviations (derogations) from the obligations contained in AIHTS such as: public health interests and safety, protection of public and private property, research, education, reintroducing and recreation of population, breeding or protecting flora and fauna, using of traditional wooden traps to maintain cultural heritage of local communities raise serious doubts as regards the realization of the humane purpose of the Agreement. However, such exemptions may be granted by relevant authorities only as exceptions.

The parties are, moreover, obliged to cooperate at international level and exchange information as regards humane method of capture as well as mutual recognizing of traps when they were already recognized by one of the countries covered by AIHTS (art. 10 AIHTS).

In connection with the implementation of AIHTS into legal systems of the

EU member states, a question arises of the relation between AIHTS and the Bern Convention that constitutes an element of *aequis communautaire*. The European species that are joint for both AIHTS and the Bern Convention include: wolf (*Canis lupus*), beaver (*Castor fiber*), otter (*Lutra lutra*), lynx (*Lynx lynx*), marten (*Martes martes*), badger (*Meles meles*) and ermine (*Mustela erminea*). As regards these species, the Convention prohibits to use snares and non-selective traps, whereas AIHTS obliges to use certified traps.

There is no doubt that in the countries that ratified the Bern Convention there is a ban of catching/capturing into snares of species covered by annexes II and III of that convention. Keeping this prohibition in force does not, however, violate the agreement as art. 5 of AIHTS states that “A party may maintain the ban on using snares on its territory whose application was prohibited on the day when this Agreement was introduced”.

The species not included in the Bern Convention but on AIHTS list are as follows: raccoon dog (*Nyctereutes procyonoides*), musk rat (*Ondatra zibethicus*), raccoon (*Procyon lotor*) and beech marten (*Martes pennanti*). If, therefore, national law of a member state provides for a possibility of capturing such animals into snares or other types of traps, they should be certified devices in accordance with AIHTS.

According to the obligations resulting from AIHTS, Canada and Russia resign from the use of traditional clamp traps for the benefit of more humane, certified snares (traps). However, so called soft catch that are certified and allowed on the market are still devices trapping animal's limb and operating according to the principle of closing metal jaws, although they are not sharpened at ends and covered with rubber instead metal which prevents injuries as is the case of traditional clamp traps. Certified killing snares are clamp devices that break spine at animal's skull base¹⁸. Getting AIHTS certification ensures that “soft catch” snares are suited to the norm contained in the agreement and therefore do not injure, nor result in abrasion or bleedings or similar sufferings in at least 80% of cases of captured animals, whereas killing snares kill in relatively short time i.e. from 45 to 300 seconds depending on species. Due to it, pelts and products gained from animals captured in Canada and Russia may be imported into EU territory without breaching the regulation no 3254/91 - so called “clamp trap one”. In such a way EU tries to expand the borders of humane protection and care for biological diversity far beyond the territory of its member states, influencing favourably the improvement of the environment on international scale.

3. Using traps in Poland

3.1. General remark

Although wild living animals constitute the country's national property, they have a diversified legal status depending on the species classification. They may es-

¹⁸ Current in 2017 list of certified names of restraining and killing traps allowed on the market in Canada <http://fur.ca/wp-content/uploads/2015/10/Certified-Traps-List-FIC-July-1-2017-Eng-8%C2%BD-X-14.docx.pdf>

pecially be under species protection (strict or partial) or enjoy protection resulting from the hunting law. All animals, including those not covered by the species or use protection are subject to humane and legal protection pursuant to art. 2 of the act dated 21 August 2017 on the protection of animals.¹⁹ The humane and legal protection is a term worked out by the doctrine and “belongs to the protection types against humans, their most widely conceived activities that bring suffering to animals”²⁰. It results from ethical reasons that forbid exerting unnecessary suffering to animals as living creatures. It is a part of the law on animal protection besides the species and use type of protection²¹.

In 1996 Poland ratified the Bern Convention²² obliging itself at the same time to ban the use of snares in relation to the species contained in it. The prohibition of applying clamp traps became effective on the day of Poland joining the EU structures and the Council Regulation no 3254/91 is applied directly without the need of its transposition in the form of national legal acts. Poland implemented the requirements of the habitat directive into the act on nature protection dated 16 April 2004, including those clauses relating to forbidden methods and means of capturing and killing (54 par. 1 of the act). Although the ratification by EU of AIHTS agreement did not influence the ban on using snares in Poland, it, however, obliged the country to certify restraining traps, trainings for hunters as well as international cooperation and exchanging of information on humane animal capture.

All the species of wild living animals and appearing in Poland, as mentioned in AIHTS, are covered by species protection or constitute hunting game. The animals that are covered by species protection and are also within AIHTS concern include: wolf (*Canis lupus*), beaver (*Castor fiber*), otter (*Lutra lutra*), lynx (*Lynx lynx*), ermine (*Mustela erminea*), whereas hunted species within AIHTS concern include: raccoon dog (*Nyctereutes procyonoides*), musk rat (*Ondatra zibethicus*), raccoon (*Procyon lotor*), beech marten (*Martes pennanti*), marten (*Martes martes*) and badger (*Meles meles*).

3.2. Capturing of species subject to capture procedures

Game capture is an important element of capture economy, however it does not constitute hunting as understood by the act dated 13 October 1995 - the hunting law²³, as it consists in gaining live animals. Art. 9 par. 3 of the act states that for breeding and scientific purposes, including export, it is allowed to capture live game only with the use of nets and non-injuring traps, including traps not catching animal's limbs. The Minister of Environment, after getting expert opinion of the State Council for the Protection of Nature, issues a permission to capture game for the purposes connected with research and education, to recreate population, settle and reintroduce

¹⁹ Vol. of Laws z 2017 item 1840.

²⁰ R. Paczuski, *Prawo ochrony środowiska*, Bydgoszcz 2000, p. 494.

²¹ M. Micińska-Bojarek, *Łowiectwo. Aspekt humanitarno – prawny*, Poznań 2014, p. 40.

²² Vol. of Laws from 1996 No 58, item 263.

²³ Vol. of Laws from 2005 No 127, item 1066.

certain species or for necessary breeding activities as well as in protecting periods due to the lack of other satisfactory solutions and provided that it is not harmful for the maintenance of the population of such species in their natural habitat (art. 44 par. 3 of the hunting law). Such permission is issued at the application that must meet statutory prescribed requirements.

Moreover a lessee or a managing party of a hunting precinct may effect capture of predator species as mentioned in the executory regulations. Such lessees or managing parties of a hunting precinct kills animals captured in restraining traps with the use of hunting guns or other methods applicable when slaughtering home-bred animals (art. 44a par. 1 and 1 the hunting law).

From the above results that the legislator has prescribed three kinds of capturing devices: nets, traps not injuring animals and not catching animal's limbs as well as restraining traps. The act does not define the term of "nets" and "traps not injuring animals and not catching animal's limbs". From the practice, one may assume that nets are meshes fixed to the ground meant for capturing hares and pheasants. The "traps not injuring animals and not catching animal's limbs" are various kinds of corals, aviaries, etc. Characteristics of the last type of device was described in detail in the regulation by the Minister of Environment dated 29 September 2009 - on the application of restraining traps²⁴. It describes species of predators that may be captured into restraining traps, time and place of such capture, kind of such traps and conditions that they must meet in order to provide a selective capture of predators. Such restraining traps may only be used to capture the following four species: a fox, a raccoon dog, an American mink and a raccoon.

This regulation provides further that on behalf of the lessee or managing party of a hunting precinct, such restraining traps may be set up by a person who has a written permission of the lessee or the managing party. The regulation does not specify that such a person must be a hunter as understood by the hunting law, but it seems that it may as well be a person not being a hunter as capturing animals is not hunting. However, such capture should be carried out during periods when hunting such animals is allowed, within the hunting precincts and within the number of animals as contained in a year hunting schedule of animals to be captured and valid for that economic year.

The following provisions of the regulation deal in a detailed way with the construction of traps. In order to capture predators, one may use both stationary and mobile traps, of cage, box and pipe type. They may be "going through" type that enable a predator to enter from both sides or from only one. Restraining traps should be non-injuring ones and also not catching animal's limbs, be suited in size to predators' sizes, provide reaction of a hatchet mechanism for the weight of specific predators, be equipped with a bait luring only desirable predators, in the case of cage traps be equipped with a hole to check their contents and have security devices making it impossible for captured predators to get out. They should also be checked at least every 24 hours by persons having capture permissions. The above regulation is aimed at both humane and environmental protection aspects - selection of desirable predators.

²⁴ Vol. of Laws from 2009 No 167, item 1321.

Additional recommendations as regards the use of restraining traps may be found in the programme documents of PZŁ²⁵ (Polish Hunting Association).

Using of such illegal methods as snares or iron clamps for animal capture is forbidden. Although the hunting law due to its long traditions uses some archaic terminology, however one should notice that snares and iron clamps are synonymous with today's snare traps and clamp traps. Their use is a crime that is subject to imprisonment up to 5 years pursuant to art. 53 item 5 of the hunting law. Also gaining animals with the use of injuring traps, catching them by their limbs or killing is considered as falling within the above definition of crime.

As also animals covered by species protection may get accidentally into game traps (e.g. ermines, otters or weasels) one should pay attention to the regulation of art. 58 par. 3 of the act dated 16 April 2004 - on the protection of nature that requires to notify a relevant regional director of environmental protection of accidental capturing or killing of an animal belonging to species that are under strict protection or of a weasel. The norm is for all who have accidentally captured or killed an animal under strict protection or a weasel as well as state institutions that have learned of such event.

As regards the implementation of AIHTS into the hunting law in Poland, it was established that the term used in the Polish version ("sidło" - a snare) should be understood in a wide way as a trap. As raccoon dogs and raccoons are covered by AIHTS, they should be captured in traps meeting the requirements of the agreement. The question arises whether according to the Polish law they may be certified traps of the *soft catch* type that is a limb catching latch type. The answer should be negative. Although in connection with AIHTS, the EU law allows for such traps but the hunting law prohibits their use and pursuant to art. 5 of AIHTS keeping such ban in force is in accordance with the agreement's requirements. No doubt that restraining traps are devices of much higher humane standard than certified latch traps as the former make it possible for an animal to change its position and do not catch its limbs therefore not leading to joint dislocation, abrasions or bleeding, etc.

However, according to the agreement's requirements, such restraining traps used to capture raccoon dogs and raccoons should be certified, i.e. they should have a certificate by a certifying body and meet the norms of the International Norm Organization ISO 1991 as regards testing traps for mammals (*International Standard ISO/DIS 10990-4-5*). Moreover, they should contain an instruction of their proper setting, safe use and maintenance. However, meeting the technical requirements prescribed in the regulation by the Minister of Environment and applying the internal recommendations of PZŁ may not be considered as tantamount to the procedure of certification. The process of certification is a strictly prescribed proceeding where a third party (organization or an institution) awards a written certificate stating that a specific product meets certain requirements²⁶.

A clear discrepancy as regards AIHTS implementation into the national law is the gap in the hunting law that makes it possible to set traps for predators in order

²⁵ *Program odbudowy populacji zwierzyny drobnej w województwie mazowieckim*, Warsaw 2012, p. 30 at http://www.pzl.waw.pl/pdf/program_ratowania_2013.pdf

²⁶ <https://sjp.pwn.pl/szukaj/certyfikacja.html>

to protect property and livestock of homesteads, agricultural farms and enterprises. Such proceeding is not connected with carrying out of capture policy and does not demand permission nor any licence. As a matter of fact, the law does not regulate this issue as everybody may buy and set a restraining trap for species subject to capture and contained on the AIHTS list. Moreover, in order to protect property and livestock of private persons and agricultural farms various devices are used, sometimes prepared on one's own, that might inflict unnecessary pain to animals as well as constitute a threat for the protected species. Removing of this discrepancy should take place by means of introducing the need of certifying restraining traps not only for capturing animals within the capture economy policy but for all remaining uses as well. In addition, following the rule of humane handling, one should describe the way of dealing with captured animals: animals captured by restraining trap outside a hunting precinct should be immediately set free into their natural habitat located at a safe distance from the protected premises.

Introduction of the obligation of certification of restraining traps should be connected with expanding the list of animals as prescribed by the Minister of Environment that may be captured into restraining traps by the species mentioned by AIHTS i.e. a musk rat, a beech marten, a marten and a polecat. As everybody may set traps for these animals in order to protect property, livestock of homesteads, agricultural farms and enterprises, especially hunters should be able to enjoy such right.

The AIHTS agreement in art. 8 b requires the organization of hunting trainings as regards "humane, safe and effective application of capture methods, including the new ones". Consequently, only hunters who have undergone relevant training should be allowed to capture animals. It should be emphasized that hunting regulations and executory acts should be presented in detail to all candidates for hunters during their preliminary course before joining such organizations as PZŁ. Tasks of the Polish Hunting Association (PZŁ) include, among others, organizing trainings as regards proper animal capture and hunting shooting (art. 34 item 7 of the hunting act) and it is a condition of being granted a licence for hunting to undergo such training as conducted by PZŁ (art. 42 par. 4 of the hunting act). However, from the review of framework programmes of trainings for candidates for hunters available in the Internet, it results that the problem of humane, safe and effective use of capture methods is not specified. In order to implement AIHTS requirements, one should introduce adequate changes in the Minister's regulation dated 28 December 2009 on granting hunting licences²⁷.

3.3. Capturing of animals covered by species protection

This issue is dealt with by the act dated 16 April 2004 on the protection of nature. Instead of the characteristic Polish term for hunting "odłów" (live catching) the act uses the term of capturing. In art 49 of the act, an authorization to cover certain animals under species protection was introduced. Generally, such animals may not be

²⁷ Vol. of Laws from 2010 No 3, item 19.

caught (art. 52 par.1 item 2 of the act), though there are many exemptions. Pursuant to art. 56 par. 1, 2 and par. 4 of the said act, the General Director of Environmental Protection or a regional director for environmental protection may on their area allow to capture wild living animals covered by such species protection. These are individual permissions issued at the request of a person harmed (concerned).

The above quoted permission may be issued in the case of finding no other solutions and if it not harmful for keeping in adequate condition protection of wild living population of protected animal species and if one of the premises as prescribed by art. 56 par. 4 items 1-7 of the act is met (e.g. protecting wild living species). Such permission indicates allowed methods and means of capture, catching or killing animals. The act stipulates that capturing animals may not be done “with the use of devices, ways or methods operating on a large scale or in a non-selective way that may result in a local disappearance or serious disturbance in the population of such animals, and especially with the use of snares, hooks and gluing baits” (art. 54 par.1 item 16 of the act). The solution contained in art. 54 par. 1 of the act introduce, therefore, limitations as regards capturing of animals under protection for which permission was granted by relevant authorities. One should emphasize that such limitations reflect the requirements of the Bern Convention and habitat directive. Methods applied while implementing such permission should be as humane and selective as possible as well as provide an animal full chance for its survival²⁸. Consequently, getting a licence does not release from adhering to the limitations resulting from art. 54 par. 1 of the act and its breaching will be a crime according to art. 131 item 1 let. a) of the said act.²⁹ As far as killing methods of animals under species protection are concerned the only allowed way is shooting them with the use of hunting guns. One may not use methods that are not prescribed by the act and thus illegal such as killing traps.

Animals under species protection in Poland contained in the regulation and AHITS include: beaver (*Castor fiber*), otter (*Lutra lutra*), wolf (*Canis lupus*), lynx (*Lynx lynx*) and ermine (*Mustela erminea*). In the view of the act on the protection of nature, capturing such animals with the use of snares and other non-selective methods is forbidden. Only selective methods such as restraining traps may be used provided that these are certified traps in accordance with the AIHTS requirements. Unfortunately, the act does not provide for delegating of executory regulations specifying ways of setting traps and technical standards for animals under species protection. Issuing such regulation is *de lege ferenda* application aimed at achieving full conformity of the Polish law on nature protection with the AIHTS agreement.

4. Summary and conclusions

When summarizing so far findings, one should state that Poland meets the requirements of the EU law as regards humane standards of traps for the animals mentioned in the Bern Convention that is *aequis communautaire*, clamp trap regula-

²⁸ Compare K. Gruszecki, *Ustawa o ochronie przyrody. Komentarz*, Warsaw 2017, p. 364.

²⁹ *Ibidem*, p. 784.

tion and the habitat directive. In Poland it is forbidden to use non-selective traps, especially clamp traps and snares. The ban on using snares is connected with ratifying by Poland of the Bern Convention and concerns animals contained in the annexes to it, all of which have a status of protected or hunted species in Poland. The ban on using clamp traps results from the Council Regulation no 3254/91. Due to its humane *ratio legis* it is of general character and concerns all types of animals, including also those not covered by species or hunting protection. It is therefore in force also in the case of capturing homeless animals, fighting pests etc.

According to the Polish law, using clamp traps and snares is forbidden for capturing hunted animals (art. 43 par. 5 of the hunting act) as well as capturing animals being under species protection (art. 54 par. 1 item 16 on of the act on nature protection). Also using killing snares and traps is forbidden, which results from art. 53 item 5 of the hunting act, as such killing traps are not provided for in the act and thus are illegal methods of animal catching.

Some important doubts connected with implementing into the national legislation of the AIHITS requirements result from terminological differences. Polish wording of the agreement uses the term "sidło" (a snare), whereas the English and Russian versions a term of wider meaning - a trap. Literally taken, using snares is forbidden in Poland therefore AIHITS obligation connected with certification and using snares should not bind Poland. However, rejecting the linguistic interpretation and accepting the aim-related, pro-community and comparative one is supported by the type of the source of the law - an international agreement. Therefore, one should state that AIHITS commitments connected with snare certification should be referred to restraining traps, accepting the interpretation of the term of a snare in a wide way as a trap.

Consequently, when referring to specific issues connected with AIHITS implementation, one should state that art. 5 of the agreement allows Parties to maintain so far regulations prohibiting using snares. As a result, all the above bans remain in force according to the national law.

The obligation of snare certification resulting from the AIHITS agreement, understood in this case in wide way as traps, is connected with the need to introduce national procedure of certifying restraining traps for capturing hunted species as well as those under species protection. From the analysis of the collected research material, it results that restraining traps allowed to be sold in Poland do not have proper certification. These are both Polish and foreign devices made usually of attested, galvanised, welded crate steel, covered with paint (more rarely of wood). Using by a manufacturer of certain bait - food requires a consent of a veterinary inspector.

As far as certification of killing traps is concerned, one should remark that their use is forbidden *expressis verbis* by the hunting law. However, in the view of the act on protection, a killing trap is not contained there and therefore is an illegal method of killing animals. As a result, certifying of killing traps according to the Polish law is pointless.

Within the hunting law there are executory regulations referring to the conditions of setting and technical requirements of restraining traps, however such regulations may not be considered as being equivalent to the procedure of certification.

According to the nature protection law there are no executory regulations are regards restraining traps for capturing animals under species protection. From the above, it results that a basic obligation of Poland and *de lege ferenda* application resulting from the agreement's obligations is establishing procedural rules and proper body for certifying restraining traps for capturing species as mentioned in AIHTS. It is also necessary to impose on trap producers of an obligation of attaching an instruction manual as regards proper setting, safe use and maintenance of sold traps.

In order to harmonize AIHTS regulations with the hunting law, one should expand the list of animals that may be captured into restraining traps by the species mentioned in AIHTS, i.e. by: musk rat (*Ondatra zibethicus*), beech marten (*Martes pennanti*), marten (*Martes martes*), beaver (*Meles meles*) and polecat (*Mustela putorius*). Relevant changes should be introduced into section 2 of the regulation by the Minister of Environment issued according to art. 44a par. of the hunting law. Moreover, a section should be added to art. 44a par. 2 of the said act obliging to use only certified restraining traps that meet the ministerial requirements also for capturing predators outside the hunting economy policy, i.e. for protecting property and livestock as there is currently a legal gap in this respect.

Important obligation of implementing AIHTS into the hunting law is organization of hunting trainings on "humane, safe and effective use of capture methods, including the new ones". According to the agreement, a right to capture animals should be granted exclusively to hunters who have undergone a relevant training as current law does not exclude capturing animals by non-hunters. A relevant law should be introduced into the Minister's regulation on restraining traps. Moreover, current training programmes by the Polish Hunting Association (PZŁ) do not take into account the above trainings to satisfactory extent. In connection with the above, the Minister's Regulation dated 28 December 2009 on licences for hunting should be changed. *De lege ferenda* proposal is to add item 14 to section 3 par. 1 of the regulation of the following wording: Examination aimed at gaining basic licence for hunting comprises checking of knowledge on humane, safe and effective way of using capture methods, including the newly emerging ones.

Conformity of regulations on nature protection with the AIHTS requirements should be achieved by issuing executory regulations obliging to use certified restraining traps for animals under species protection and on AIHTS list. Currently, there is a statutory delegation to issue the suggested executory act. *De lege ferenda* proposal is to introduce into the act of art. 54 par. 3 of the following wording: Minister relevant for environmental issues, after getting opinion of the State Council for Nature Protection, shall describe in a way of an ordinance: 1) animal species that may be captured by restraining traps, 2) conditions, place and time of their capture, 3) types of restraining traps and technical conditions that they must meet to provide selective capturing and humane animal handling.

The additional *de lege ferenda* conclusions resulting from the collected material are the needs to determine in art. 44a of the hunting act the way of handling predators caught in order to defend property, livestock of homesteads, agricultural farms or enterprises (art. 44a par. 2a, second sentence of the hunting act: a captured

animal should be immediately set free into its natural habitat at a safe distance from the protected object). Moreover, for more effective penalization of poaching, one should replace the wording of art. 53 item 5 of the hunting act “becomes a game owner” by “aims at becoming a game owner”.

Within the existing regulations, one should suggest the following: conducting and making public of current and regular hunting statistics as regards capturing predators, greater involvement of the subjects concerned to develop international cooperation and research as regards humane capture methods, conducting trainings for administrative staff, subjects and staff obliged to implement the relevant regulations, spreading ecological education on humane animal protection and species protection in connection with using traps for predators in order to defend property and livestock of homesteads, farms and enterprises. Taking into account the above suggestions *de lege ferenda* and *de lege lata* will provide a full conformity of the national law with the EU law as regards the subject matter, contributing to the improvement of the status of wild animals both in the context of their humane treatment as well as nature protection.

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