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The Legal Basis for Control in the Sphere of Use and Protection of the Animal World in Ukraine

*Podstawy prawne wykonywania kontroli w zakresie
wykorzystania i ochrony zwierząt na Ukrainie*

According to the Law of Ukraine “On the Animal World”, the animal world is one of the components of the natural environment, the national wealth of Ukraine, a source of spiritual and aesthetic enrichment and education of people, the object of scientific research, as well as an important basis for obtaining industrial and medicinal raw materials, food products and other tangible assets. In legal literature, the animal world is considered as a collection of wildlife, living organisms that exist and develop in the natural environment on land, in water, in the atmosphere, soil, etc.¹.

Humanity cannot yet completely abandon the industrial and other use of animals, which ultimately endangers their habitat. The main threats to the animal

¹ *Pravovaia okhrana pryrody v SSSR*, Moskvá 1976, pp. 51–52; M.V. Krasnova, *Pravovyi rezhym vykorystannia, vidtvorennia i okhorony tvarynnoho svitu*, [in:] *Ekolohichne pravo: Osoblyva chastyna: Pidruchnyk*, pod red. V.I. Andreitseva, Kyiv 2001, p. 404.

life today are connected with negative human activity, which may be manifested in the destruction of the natural habitat of animals, the contamination of their places of stay, the spread of diseases and pests, reduction of the forage base, etc. Negative changes in the natural environment encourage society to give priority to measures aimed at legal regulation of ecologically balanced use of natural resources in general, rational use, protection and reproduction of objects of the fauna². As an object of legal protection and use, the animal world is extremely diverse and is characterized by a wealth of species, the preservation of which is one of the most important tasks of environmental protection. This imposes on the state the obligation to create a system of bodies for supervision and control over compliance with legislation on the animal world, whose tasks are to protect and use objects of the animal world, regardless of their stay in Ukraine³. Considering this, research on the activities of state authorities in the implementation of the control function in the field of use, reproduction and protection of the animal world is of utmost relevance.

The purpose of this article is to determine, on the basis of an analysis of the legislation of Ukraine and special literature, the features inherent in the legal regulation of control in the field of use, reproduction and protection of the animal world.

Works of V.I. Andreitsev, H.I. Baliuk, A.P. Hetman, O.V. Holovkin, M.V. Krasnova, N.R. Malysheva, V.L. Muntian, Yu.S. Shemshuchenko and other well-known scientists were the theoretical and legal grounds for this study.

In accordance with the Law of Ukraine "On Environmental Protection" of June 25, 1991, control is one of the main functions of environmental protection management. Control takes a final position in the system of management functions. By organizational and legal nature, it should be considered as a systematic, constructive and positive activity, which takes place both in the regulatory and law-enforcement relations, due to the close connection of control with the process of making managerial decisions.

Norms of general and special legislation which collectively constitute an independent legal institute in the system of faunal legislation of Ukraine form the

² L.D. Nechyporuk, *Ekoloho-pravove rehuliuвання ratsionalnogo vykorystannia ob'ektiv tvarynnoho svitu*, Avtoref. dysert. kand. yuryd. nauk. Instytut derzhavy i prava imeni V.M. Koretskoho Natsionalnoi akademii nauk Ukrainy, Kyiv 2009, p. 3.

³ M.Ya. Vashchyshy, *Pravovyi rezhym vykorystannia y okhorony tvarynnoho svitu*, [in:] *Pravo dovkillia (ekolohichne pravo): navchalnyi posibnyk*, pod red. P.D. Pylypenka, Kyiv 2010, p. 281; Yu.S. Petliuk, *Tvarynnyi svit yak ob'iekt ekoloho-pravovoho rehuliuвання*, "Naukovyi visnyk Natsionalnogo universytetu bioresursiv i pryrodokorystuvannia Ukrainy" 2015, Vyp. 213, Ch. 1, pp. 69–73.

legal basis for exercising control in the sphere of use, reproduction and protection of the animal world.

The Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Economic Activity” of April 5, 2007, which defines legal and organizational principles, basic principles and procedure for exercise of state supervision (control) in the sphere of economic activity, powers of state bodies for the supervision (control), their officials and rights, responsibilities and liability of economic entities during the exercise of state supervision (control) is the basic regulatory legal act in the sphere of control.

The procedure for exercising control over the protection of the natural environment and the use of natural resources is regulated by the Law of Ukraine “On Environmental Protection”. According to Art. 10 of the said law, the exercise of state and public control over the observance of legislation on environmental protection, including legislation on the animal world, is one of the guarantees of the environmental rights of citizens.

The peculiarities of exercising control over the use, reproduction and protection of wildlife are determined by the laws of Ukraine: “On the Animal World” of December 13, 2001; “On Hunting” of February 22, 2000, No. 1478-III; “On Fishery, Industrial Fishery and Protection of Water Bioresources” of July 8, 2011; “On the Red Book of Ukraine” of February 7, 2002; “On Protection of Animals from Cruel Treatment” of February 21, 2006; “On the Nature Reserve Fund of Ukraine” of June 16, 1992; etc.

International legal acts contain a number of legal norms on control over the use, reproduction and protection of wildlife. This is explained by the fact that wild animals are in a state of natural freedom, and fishing is carried out both in inland waters, in inland marine economic zones and in open areas of the oceans⁴. In particular, they include: the Convention on Biological Diversity; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention for the Protection of Wildlife and Natural Habitats in Europe; the Convention on the Conservation of Migratory Species of Wild Animals; the Agreement on the Conservation of Bats in Europe; the Agreement on the Conservation of African-Eurasian Migratory Waterbirds; the Agreement on the Conservation of Cetaceans in the Black Sea, the Mediterranean Sea and the Adjacent Waters of the Atlantic Ocean; the Convention on the Protection of the Black Sea Against Pollution, etc.

⁴ S. Marchenko, *Osoblyvosti pravovoho rehuliuвання rybnoho hospodarstva v Ukraini*, “Naukovyi visnyk Natsionalnoho universytetu bioresursiv i pryrodokorystuvannya Ukrainy. Serii: Pravo” 2016, Vyp. 243, p. 87.

Control in the field of use, reproduction and protection of wildlife is realized both through regulatory and law-enforcement relations, which are characterized by a specific object and subject structure as well as content.

The objects of the animal world, which are natural resources of national importance, as well as the activities of the relevant subjects of nature management are the objects of control in the sphere of protection, use and reproduction of the animal world. At the same time, control measures apply to both the special and general use of the objects of the animal world, as well as to any activity that affects or can affect wildlife natural environment and the state of the animal world.

According to Art. 3 and 4 of the Law of Ukraine “On the Fauna”, the objects of the animal world are: a) wild animals in the natural environment within the territory of Ukraine, its continental shelf and the exclusive (maritime) economic zone; b) other objects of the animal world, that are subject to the Law of Ukraine “On the Fauna” and which are in state ownership; and were recognized as objects of national importance (parts of wild animals and waste products of wild animals); c) objects of the animal world, which, in the manner established by law, were acquired in communal or private property⁵.

The specific subject composition of legal relations in the sphere of control over the use, reproduction and protection of the animal world is characterized by the presence of subjects who are vested with authority in relation to others and those, which are subject to power influence. The first group of subjects consists of government bodies, public inspectors and bodies in whose office there are enterprises, institutions, organizations that use objects of the animal world. The second group of subjects consists of central executive bodies and their territorial bodies, local executive bodies, local self-government bodies, enterprises, institutions and organizations irrespective of the form of ownership and management, citizens of Ukraine, foreigners and stateless persons, as well as legal entities – non-residents.

According to Art. 57 of the Law of Ukraine “On the Fauna”, the system of bodies exercising state control in the sphere of protection, use and reproduction of the animal world consists of the Cabinet of Ministers of Ukraine, local state administrations, councils and their executive bodies, specially authorized central executive bodies on ecology and natural resources, hunting and fishery and their territorial bodies, the executive authorities of the Autonomous Republic of Crimea on the issues of ecology and natural resources and hunting, other state bodies in accordance with the law.

⁵ *Tvarynnnyi svit Ukrainy: pravova okhorona, vykorystannia ta vidtvorennia*, pod red. H.I. Baliuk, Kyiv 2010, pp. 14–19.

The Law of Ukraine “On the Fauna” provides for an inexhaustible list of bodies that exercise state control over the protection, use and reproduction of the animal world. In particular, according to the Law of Ukraine “On the Protection of Animals from Cruel Treatment”, the action of which extends, among other things, to the treatment of wild animals, the functions of monitoring the compliance with the requirements of legislation on the protection of animals from cruel treatment during scientific experiments are entrusted to the central executive authority on science and education – the Ministry of Education and Science of Ukraine.

These bodies of state power exercise powers arising from the content of the right to state ownership of the fauna, on the basis of normative legal acts defining their legal status, and acts of environmental legislation. Control in the field of use, reproduction and protection of the animal world by the subjects of its implementation is divided into state, public and departmental.

By areas of use of the animal world the following types of control can be distinguished:

- control in the field of hunting;
- control in the field of fisheries, including the extraction of aquatic invertebrates;
- control over the use of objects of the animal world in scientific, cultural, educational and aesthetic purposes;
- control over the use of useful peculiarities of animal life – natural sanitarians of the environment, pollinators of plants, etc.;
- control over the use of wild animals in order to obtain their waste products;
- control over the use of obtaining (purchasing) wild animals for the purpose of their maintenance and breeding in semi-captive conditions or in captivity.

The features of legal regulation of control in such areas as hunting and fishing are regulated at the level of special legislative acts. Thus, the Law of Ukraine “On Hunting” defined the system of state control bodies in the field of hunting and public control over hunting; rights and obligations of users of hunting grounds and the rights of employees authorized to control hunting, liability for violations of legislation on hunting, etc.

Peculiarities of control in the field of fishing, including the extraction of aquatic invertebrates have more detailed regulation. The exercise of state supervision (control) in the field of fisheries was defined by the Law of Ukraine “On Fisheries, Industrial Fisheries and Protection of Aquatic Bioresources” as one of the main tasks of the state policy in the field of fisheries.

The tasks of state control over the fishery, that is, activities of legal entities and individual entrepreneurs, associated with the study of aquatic biological resources, their protection, reproduction, realization, etc., are as follows: realization of the state policy in the field of study, protection, reproduction, rational use of

aquatic biological resources, their processing and aquaculture; maintenance of the balance between production capacities of users, available stocks of water bioresources and their reproductive potential; fulfillment of obligations under international treaties of Ukraine on the conservation and rational use of water bioresources during the conduct of fishing activities in waters beyond the jurisdiction of Ukraine; prevention of depletion of fishery water bodies (their parts); state control over quantity, quality, specific composition of water bioresources imported into Ukraine; protection of the rights and legitimate interests of individuals and legal entities that have received quotas for catching aquatic biological resources, by regulating the import into Ukraine of those types of aquatic biological resources that are used in water bodies of Ukraine by domestic users.

State control is exercised by the central executive authority in the fishing industry and by bodies of fish protection. Despite the general tendencies of deregulation of economic activity, the said law provides for more than 14 types of state control in this area. They include:

- state supervision (control) in the field of protection, use and reproduction of living water resources in the exclusive (maritime) economic zone of Ukraine, the territorial sea, inland waters of Ukraine and in waters outside the jurisdiction of Ukraine regarding fishing vessels sailing under the State Flag of Ukraine, according to international treaties of Ukraine;
- state control of the technical state of fish protection facilities, conduct of fish protection measures at the water intake and engineering structures of irrigation systems;
- control over observance of the rules of fishing;
- monitoring compliance with the limits and standards for the use of aquatic biological resources;
- state control over the safety of navigation of the fishing industry fleet;
- control over the compliance with the qualification requirements (standards) for the preparation and certification of fishing vessel personnel;
- monitoring compliance with the procedure for the purchase or sale of sturgeon fish and their products;
- monitoring compliance with the established procedure for the prohibition of catch of aquatic biological resources in fisheries water bodies (their parts);
- other types of control.

Public control in the field of protection, use and reproduction of aquatic biological resources is carried out by public fisheries inspectors in accordance with the Regulations on public fisheries inspectors, which was approved by the Order of the Ministry of Agrarian Policy of Ukraine of October 9, 2002, No. 324.

The exercise of control over the use, reproduction and protection of wildlife presupposes the existence of specific rights and obligations for its subjects.

Specificity regarding the rights and obligations of state authorities – subjects authorized by the state is manifested in their status, according to which the formula “only what is established in the law is allowed” is expressed in their powers. According to part two of Art. 19 of the Constitution of Ukraine, bodies of state power and bodies of local self-government, their officials are obliged to act only on the basis, within the limits of authority and in the manner provided by the Constitution and laws of Ukraine.

The generalized list of the rights of officials of specially authorized central executive bodies and their territorial bodies exercising state control and management in the field of use, reproduction and protection of the animal world, as well as enterprises, institutions, organizations and public inspectors is enshrined in Art. 60 of the Law of Ukraine “On Fauna”, which in legal literature are divided into the powers of an inspection nature, regulatory direction, human rights protection, jurisdictional direction and analytical-information direction⁶.

The control bodies in the field of use, reproduction and protection of wildlife in the process of performing the tasks assigned to them interact in the prescribed manner with other executive authorities, subsidiary bodies and services formed by the President of Ukraine, bodies of local self-government, relevant bodies of foreign states and international organizations, trade unions and employers’ organizations, as well as enterprises, institutions, organizations.

Violation of legislation in the field of use, reproduction and protection of the animal world entails administrative, civil or criminal liability. The list of violations of the faunistic legislation is fixed in Art. 63 of the Law of Ukraine “On Fauna”, Art. 42 of the Law of Ukraine “On Hunting”. The Law of Ukraine “On Fisheries, Industrial Fisheries and the Protection of Aquatic Bioresources”, in addition to the specified types of liability, provides for bringing the perpetrators to disciplinary responsibility (Art. 52).

Responsibility for fishing activities on ships under the State Flag of Ukraine outside Ukraine is established on the basis of international treaties of Ukraine. In the case of such activities in the exclusive (maritime) economic zones of foreign states, responsibility is established by the legislation of these states.

Responsibility for committing a specific offense in the sphere of use, reproduction and protection of the animal world comes according to the prescriptions of environmental, agrarian, labor, administrative, civil, criminal and other legislation.

Thus, on the basis of the conducted research it is possible to determine the following features that are inherent in the legal regulation of control in the sphere of use, reproduction and protection of the animal world:

⁶ *Tvarynniyi svit Ukrainy: pravova..., op. cit.*, pp. 242–256.

1) The legislative implementation of the control in the sphere of use, reproduction and protection of animal world is characterized by the fact that the legal rules in the investigated sphere belong to various branches of law, namely constitutional, administrative, economic, environmental, agrarian, international, etc., which together form the interdisciplinary legal institute of the control in the field of use, reproduction and protection of the animal world;

2) The control over the use, reproduction and protection of the animal world is implemented through legal relationships that are of a regulatory or protective nature;

3) The system of control authorities in the sphere of use, reproduction and protection of the animal world is not legally defined, since practically all state and other authorities which take decisions on environmental protection and use of natural resources have control powers;

4) The control bodies belong to public authorities, which are obliged to act only on the basis, within the limits of authority and in the manner provided by the Constitution and laws of Ukraine. The general list of authorities in the field of control in the sphere of use and protection of objects of wildlife is determined by the Law of Ukraine "On the Animal World", their specification depends on the type of control and the object of control;

5) The legal regime of the object of the wildlife and the type of nature use (e.g. general or special nature use) lies in the basis of legislative regulation of control. For instance, control over the use of wildlife objects that are included in the Red Book is significantly different from monitoring compliance with the limits and standards for the use of aquatic biological resources;

6) Bringing offenders to liability for violation of the laws in the field of use, reproduction and protection of the animal world is a form of implementation of punitive control functions in the investigated sphere;

7) The lack of unified regulation of relations in the area of control over the use, reproduction and protection of the animal world reduces the effectiveness of legal regulation of relations in the field of use and protection of the animal world.

Control over the use, reproduction and protection of the fauna is one of the most important functions of the state in ensuring the right of everyone to an environment that is safe for life and health and for compensation for damage caused by violation of this right, stipulated in Art. 50 of the Constitution of Ukraine. Proper regulation of control activities in the field of use, reproduction and protection of wildlife can become a guarantee of observance of the norms of the current legislation, and substantially balance the relationship between the subject and the object of control.

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Abstract: The article is devoted to the legal bases for control in the sphere of use, reproduction and protection of the animal world. Legislative support of environmental control in the field of use, reproduction and protection of wildlife was considered. The system and powers of state authorities and bodies of local self-government concerning the implementation of the control function in the field of use, reproduction and protection of the animal world were investigated. On the basis of the analysis of legal literature and legislation of Ukraine, the peculiarities of legal regulation of control in the field of use, reproduction and protection of wildlife were singled out, the classification of environmental control in the sphere of use, reproduction and protection of the animal world by subjects of its implementation and the areas of the use of animal objects has been made. Particular attention was paid to the implementation of control in the field of fisheries as one of the types of agricultural production.

It was concluded that control in the sphere of use, reproduction and protection of wildlife is one of the most important functions of the state in ensuring the right to an environment that is safe for life and health and compensation for damage caused by violation of this right, stipulated in Art. 50 of the Constitution of Ukraine. Proper regulation of control activities in the field of use, reproduction and protection of wildlife can become a guarantee of observance of the norms of the current legislation, and substantially balance the relationship between the subject and the object of control.

Keywords: wildlife; fishing; ecological control; state control; public control; faunal legislation

Streszczenie: W artykule omówiono przepisy prawne dotyczące kontroli wykorzystania, reprodukcji i ochrony zwierząt, ze szczególnym uwzględnieniem uprawnień organów administracji państwowej i organów samorządu terytorialnego w przedmiotowym zakresie. Po przeanalizowaniu akademickiej literatury prawniczej i ukraińskiego ustawodawstwa przedstawiono specyfikę regulacji kontroli w zakresie wykorzystania, reprodukcji i ochrony zwierząt oraz klasyfikację tej kontroli według kryterium podmiotu przeprowadzającego kontrolę i kryterium sposobu wykorzystania zwierząt. Ponadto opisano kontrolę w dziedzinie rybołówstwa jako jednego z rodzajów produkcji rolnej.

Przeprowadzone rozważania doprowadziły do wniosku, że kontrola w zakresie wykorzystania, reprodukcji i ochrony zwierząt jest jedną z najważniejszych funkcji państwa w zakresie zapewnienia każdemu obywatelowi prawa do bezpiecznego dla życia i zdrowia środowiska oraz że w przypadku naruszenia tego prawa przysługuje odszkodowanie, co przewiduje art. 50 Konstytucji Ukrainy. Nie ulega wątpliwości, że właściwa regulacja prawna kontroli w zakresie wykorzystania, reprodukcji i ochrony zwierząt jest jedną z gwarancji przestrzegania obowiązujących w tej materii przepisów, może również przyczynić się do zrównoważenia stosunków między podmiotem a przedmiotem tej kontroli.

Słowa kluczowe: zwierzęta; rybołówstwo; kontrola ekologiczna; kontrola państwowa; kontrola społeczna; prawna ochrona zwierząt