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EVOLUTION OF PRIVATE LAW

NEW APPROACH



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**LEGAL ISSUES OF CONTRACTS**

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## **CONTRACTUAL REGULATION OF USING HUNTING LANDS**

### **Introduction**

Judicial facts is the reason for creating, changing and ending any legal relationships. Relatively, legal relationships of using hunting natural resources can create, change and end on the basis of such judicial facts as actions and events.

Judicial facts as the reason for creating legal relationships of using hunting land are characterized by their complicity. It means that in order to create appropriate legal relationships it is necessary to find several judicial facts, including contracts.

### **Formulation of problem**

According to the Article 21 (Part 2) of Laws of Ukraine “About hunting economy and hunting”<sup>1</sup>, possessing hunted animals and performing hunting economy is not acceptable without having appropriate documents in accordance with this Law. At the same time in this Law there is no exact list of such documents, their requirements and a specific order of their execution.

According to the Article 22 (Part 1) of the given Law, hunting lands for performing hunting economy can be given to use based on the Verhovna Rada’s decision in the Autonomous Republic Crimea,

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<sup>1</sup> About hunting economy and hunting: law of Ukraine from February 22, 2000, № 1478-III [Electronic resource]. Retrieved June 15, 2016 from: <http://zakon4.rada.gov.ua/laws/show/1478-14>.

regional, Kyiv and Sevastopol local authorities, which are taken with applying by the central body of executive branch. The latest is responsible for realizing a state policy in forest and hunting economy coordinated with the Council of Ministers in the Autonomous Republic Crimea, regional, Kyiv and Sevastopol local authorities, and also the land owners or users.

Besides, on the basis of regulations (Part 3 and 6 Article 21 the Law of Ukraine), in the process of giving/receiving hunting lands to use them, making the two contracts is obligatory: 1) the contract about requirements for hunting economy, that is made between the central body of executive branch realizing a state policy in forest and hunting economy and the hunting land users (Part 3 Article 21 the Law of Ukraine); 2) the contract regulating relations between the hunting area owners or users and the hunting land users (Part 6 Article 21 the Law of Ukraine).

### The contract about requirements for hunting economy

Before getting the sense of the contract about requirements for hunting economy it should be mentioned that the Ministry's of forestry in Ukraine decree from December 12<sup>th</sup> 1996 № 153<sup>2</sup> determines its standard sense.

According to the Standard contract about requirements for hunting economy, such contracts indicate: 1) the place of making the contract; 2) the date of making the contract; 3) parties to the contract.

The contract's most essential requirements:

1. Subject of the contract, which part of it reveals: 1) information of the resolution that let these lands to be used, it means: a) a name of the body to have taken it; b) the date of taking the resolution; c) the number of resolution; d) the hunting land user; e) the final date until the hunting land is permitted to use it; f) the total square of hunting land given to use, indicating the share of forest, field and water-mud land; 2) the land map-sketch and the description

<sup>2</sup> About confirming the Standard contract about the terms of hunting economy: the Ministry's of forestry in Ukraine decree from December 12, 1996, № 153 [Electronic resource]. Retrieved June 15, 2016: <http://zakon2.rada.gov.ua/laws/show/z0735-96>.

of its restrictions given by the hunting land user; 3) information of the amount of animals in the land given to use (from and to exact date).

2. Rights and duties of the parties – there is a list of the hunting land user's and the central body's of executive branch rights and duties. The latest realizes a state policy in forest and hunting economy.
3. Legal liability – predicting consequences of breaking the terms of the contract.

V.V. Ovdiienko mentioned straightly that in spite of the significant value of the contract about hunting economy, its standard form has been remaining constant for rather a long time. The matter, that this resolution had been adopted and published several years before adopting the current Law of Ukraine "About hunting economy and hunting", indicates the obsolescence of acting Standard law and its discordance with up-to-date hunting economy laws. Therefore, one of the current issues of legal regulation at Institute of hunting is to design and confirm necessarily a new Standard law about the terms of hunting economy that should meet the current laws' requirements<sup>3</sup>.

As for legacy of the contract about the terms of hunting economy, scientists express various ideas. On H.I. Zaychuk's opinion, such contract is the one about using animal world objects<sup>4</sup>, and wild animals, which are the part of animal world, are suggested to observe as the rented objects<sup>5</sup>. O.O. Tomyn<sup>6</sup>, O.V. Sakal<sup>7</sup> consider it necessary to broaden the rent form of using hunting land, and they name it as a contract of hunting land renting. At the same time N.R. Kobetska<sup>8</sup>,

<sup>3</sup> V.V. Ovdiienko, *Legacy of hunting in Ukraine: thesis for the degree of Doctor of Law: speciality 12.00.06, Land law; agrarian law; environmental law; nature and resource law*, Kharkiv 2014, p. 95.

<sup>4</sup> H.I. Zaychuk, *Legacy of protection and using animal world: abstract to thesis for the degree of Doctor of Law: speciality 12.00.06, Land law; agrarian law; environmental law; nature and resource law*, Minsk 2001, p. 15.

<sup>5</sup> H.I. Zaychuk in: *Animal world: issues of legal using and protection*, edited by L.N. Moroz, Minsk 2003, p. 58.

<sup>6</sup> O.O. Tomyn, *The Legal adjusting of hunt in Ukraine (on materials of region of Carpathians): abstract to thesis for the degree of Doctor of Law, Land law; agrarian law; environmental law; nature and resource law*, Kyiv 2009, p. 10–11.

<sup>7</sup> O.V. Sakal, "Renting lands of the state forest fund: world's experience and the mechanism of valuation," *Economy regulation mechanism* 2010/4, p. 114.

<sup>8</sup> N.R. Kobetska, *Contracts in relations of using hunting land*, "Law and society" 2014/1–2, p. 101.

V.V. Semkiv<sup>9</sup> confirm that the contract about the terms of hunting economy (the terms of using hunting land) is not the contract of hunting land renting in classical sense, because it tells about using useful properties of particular areas, but not the areas themselves.

In particular, V.V. Semkiv points out that the lawmaker formulating the regulation of the Law of Ukraine "About hunting economy and hunting" determined his position clearly about the fact that using hunting land shouldn't be confused with renting hunting land, because these two different forms of regulating various social relations. In the term of using hunting land one should understand the permission of state bodies for hunting economy. It is regulated by making appropriate contract, primary renting, with the owners or users of particular field or forest areas<sup>10</sup>.

In our opinion, using hunting land means hunting land users' activity together with using useful properties of the area surfaces (field, forest areas together with water objects located on them), which are the medium for natural resources in the period of hunting economy performing due to legal facts indicated in Part 3, Part 6 Article 21 and Part 1 Article 22 of the Law of Ukraine "About hunting economy and hunting".

It's necessary to pay much attention to the fact that hunting land, as a rule, are located simultaneously on the field, forest areas and water objects.

Therefore, we have maintained V.V. Semkiv's position that it should unify legally the practice of making contracts about transferring hunting land in use and deriving the common formula of this transferring, in spite of the fact what area (field or forest) is this particular hunting land on<sup>11</sup>.

As for water objects, legislature doesn't anticipate "direct" chance of using water objects in the period of hunting economy, which is totally logical, reasonable, and solves a range of problems that could occur as an example for Forest Code of Ukraine. At the same time, in fact, water objects can belong to hunting land. Though, one should

<sup>9</sup> V.V. Semkiv, *Contracts in the matter of using natural resources: legal aspect: thesis for the degree of Doctor of Law: speciality 12.00.03, Civil law and civil process; family law; private international law*, Ivano-Frankivsk 2013, p. 190.

<sup>10</sup> *Ibidem*, p. 188.

<sup>11</sup> *Ibidem*, p. 191.

understand that it's possible only under the following requirements: 1) the water object itself is located just on the field or forest area controlled by hunting land; 2) this water object and/or its useful properties are not taken in the period of hunting economy but only perform the territorial function.

Returning to the legacy of the contract about the terms of hunting economy, it should be mentioned that qualification of relations about using hunting land is related to the difficulty of identifying an object of leasing contract, especially hunting land. When we talk about using hunting land in the terms of leasing, it goes saying about using some useful properties of particular areas, but not using the areas themselves. Useful properties of this or that thing can't be an object of leasing contract, because in this way, according to the Civil Law of Ukraine, there can be the thing specified with individual characteristics and this thing preserves its primary look with the repeated use (Article 760)<sup>12</sup>.

At the same time, it's common knowledge that a landlord is the owner of the property or his authorized person. In this case, the party of the contract is a central executive body realizing a state policy in forest and hunting economy, where the owner's powers are not delegated. Besides, particular hunting land (considering its square) can be owned or used by several objects, with it, in the term of different forms of ownership<sup>13</sup>. It means that hunting land can be used in the areas owned by different objects or owners, especially landlords<sup>14</sup>.

Thus, we follow the idea that the contract about the terms of hunting economy is a separate type of contract characterized by a special object. It is defined by a subject composition, the prevalence of administrative elements when establishing the tenant's obligations by a special obligatory characteristics resulted from restricted use of hunting land. The contract about the terms of hunting economy has been compiled as individual, taking a particular object into account, to define and confirm the parties' obligations, chiefly to provide a proper condition of hunting land, its preservation, protection and landscaping. It's also worth noting that this contract doesn't have sufficient self-reg-

<sup>12</sup> *Ibidem*, p. 191.

<sup>13</sup> N.R. Kobetska, *op. cit.*, p. 101.

<sup>14</sup> V.V. Semkiv, *op. cit.*, p. 188.

ulatory values because it's actually based on the decision of the relevant local authority<sup>15</sup>.

### The contract regulating relations between owners or landlords and tenants of hunting land

As for the contract regulating relations between the land owners or users and tenants of hunting land, its legal nature is less complicated than the contract about the terms of hunting economy. And one more thing, it connects with the fact that hunting land can be located on the field and forest areas and at the same time forest and field areas. In the matter we have already mentioned, appropriate areas can be of different properties. In this way, it finds out that contracts should be made with each owner or land user in a separate order defined by a specific legislature (but due to practice there can be tens, hundreds and sometimes thousands of persons).

Location of hunting land within field areas of greater number of owners (landlords) makes some difficulties for the tenants of hunting land, especially when getting it in use. In many cases the owners of areas received in the result of land sharing don't use these areas, they have died, are living in other localities, stay abroad; and it's very hard and problematically to get their approval. In particular cases, they don't want to give this approval that results in impossibility of transferring hunting land to the tenant as a single array<sup>16</sup>.

Also in this case a question arises about the contract's object – if this land is the one of forest area (and in it accordance, the regulation provides due to the Land code of Ukraine and the Law "About land renting") or forest (in accordance with the Article 18, Forest code of Ukraine). If taking to account traditional way of hunting economy on the forest land, according to the Article 18 of the Forest code of

<sup>15</sup> N.R. Kobetska, op. cit., p. 101.

<sup>16</sup> Legal conclusion about the results of documentary observation given in order to give hunting land in the territory of Balakleya region for Balakleya regional organization in use (dated 02 March 2015) [Electronic version]. Retrieved June 15, 2016: <http://www.oblrada.kharkov.ua/uk/news/pravovyy-vysnovok-shchodo-rezultativ-rozhllyadu-dokumentiv-podanyh-z-metoyu-nadannya-10108.html>.

Ukraine for hunting needs, forests are transferred to the long-term terminal use<sup>17</sup>.

According to the Article 18 (Part 4) of the Forest code of Ukraine, forest of public and municipal properties are transferred to the long-term terminal use on resolutions of relative executive and self-governing bodies. The resolution has been adopted within their powers on the agreement with permanent forest tenants and the executive body on questions of forestry in the Autonomous Republic Crimea, the central executive body providing state policy in the field of forestry. According to the Article 18 (Part 5) of this Code, private properties forests are transferred to the long-term terminal use in the way of making contract between the forests' owner and terminal forest tenant. This contract is the subject to registration in the executive body about the questions of forestry in the Autonomous Republic Crimea, the central executive body providing state policy in the field of forestry. Besides, taking into consideration regulation of the Article 18 (Part 3) of the Forest code, in the first case, after taking appropriate decisions, such contract is also made.

Meanwhile, N.R. Kobetska notifies that in the register of long-term terminal forest contracts located on the site of State Forest Agency in Ukraine there is only one contract, according to which some type of activity has been defined where forest is transferred in use, and it is hunting economy<sup>18</sup>.

Therefore, we commonly support V.V. Semkiv's idea to start the process of reforming the field of using hunting land. And it's better to do when excluding word combination "for hunting economy needs" from Article 18 (Part 3) and word combination "hunting land's needs" from regulation 4 Article 67 (Part 1) of Forest code of Ukraine. Thus, excluding the meaning of renting forest area for hunting economy would be the first step on the way of unification procedure to transfer hunting land in use. This step was caused firstly by the fact that formulating regulations of Forest code of Ukraine, concerning using useful forest properties for hunting economy needs, forces you to think that the field of using hunting land is fully absorbed by the field of forestry, but it's far from true. Moreover, using forest area for

<sup>17</sup> N.R. Kobetska, op. cit., p. 101.

<sup>18</sup> Ibidem.

hunting economy as if “fall out” of the list of forest useful properties given as rented one<sup>19</sup>.

And really, when talking about using forest useful properties for hunting economy, the latest have got an economical characteristics. Then, talking about using forest useful properties for cultural retreating, recreative, sport, tourist, educational purposes, it goes about their uneconomical characteristics.

We can agree with the opinion that Article 75 of Forest code of Ukraine that fixes “separateness” of legacy to use forest useful properties for hunting economy, when pointing that this regulation is made according to Forest code of Ukraine, and also Laws of Ukraine “About animal world” and “About hunting economy and hunting”, is not quite correct, because, noted not once, using hunting land is not only to use forest useful properties, but also using useful properties of particular ground and water areas paying no attention to their status of field or forest one<sup>20</sup>.

To solve the given above problems and to develop the mechanism of giving hunting land in use, the researches give two both possible variations. Each of them, being properly researched, legislatively confirmed and practically realized, deserves existing and can contribute to the development of hunting economy.

The first variation means to create contracts about complex environmental management<sup>21</sup>, another one means to establish easements for hunting economy (permanent land easement<sup>22</sup>, nature resource easement<sup>23</sup>).

<sup>19</sup> V.V. Semkiv, op. cit., p. 192–193.

<sup>20</sup> Ibidem, p. 193.

<sup>21</sup> Legal system of Ukraine: history, condition and perspectives: [Volume 5] – V. 4: *Methodological background to development of ecological, land, agrarian and business law*, edited by Yu.S. Szemczuszenko, Kharkiv 2008, p. 166; N.R. Kobetska, *Contracts for the use of natural resources*, [in:] *Development of the mechanism of legal regulation of contractual relations in business*, edited by V.V. Luts, Kyiv 2009, p. 268–269; I.S. Shakhraj, *Natural resources as an object of rent right*, [in:] *Law in modern Belarus society: collection of scientific works*, editorial Board: V.I. Siemienkiv (chief editor) and the others, Minsk 2010, p. 414; V.V. Semkiv, op. cit., p. 194–195.

<sup>22</sup> L.D. Neczyporuk, *Ecological legal regulation of rational using animal world's objects: abstract to thesis for the degree of Doctor of Law: spec. 12.00.06, Land law; agrarian law; ecological law; natural resource law*, Kyiv 2009, p. 12; N.R. Kobetska, op. cit., p. 101.

<sup>23</sup> V.V. Semkiv, op. cit., p. 195–196.

## Conclusion

Thus, in contractual regulation using hunting land there are both theoretical and practical problems adversely displayed in the order of giving hunting land in use as a whole.

Solving these problems is possible in the way of developing the existed legally order of giving hunting land in use.

In our opinion, appropriate order must look like the following and be fulfilled gradually: 1) potential user of hunting land apply to the territorial authority of State service in Ukraine on the questions of geodesy, cartography and inventory in order to get a certificate about the fact if there are some areas for hunting economy; 2) if there are some areas for hunting economy, the potential buyer is given the certificate where total area of possible hunting land is noted, together with a part of forest, field and water-bud land and the map-sketch of a possible hunting land, together with indicating its and all the others' restrictions in this land, together with noting its owners and tenants; 3) after this, the potential user of hunting land apply to the owners or/and area tenants to get a permission for hunting economy in their land (in appropriate regulations the owner and/or tenant is noted who gives a permission, the potential user of hunting land, the total area of the land, which concerns to the permission, the periods of permission, general terms that have to be included in the contract later; such permissions can be drawn separately with each owner or tenant, either in the form of a single document, and should be subject to notarization); 4) after getting permissions from the owner and/or tenant of the areas, the potential user of hunting land take these, a map-sketch of a possible hunting land (if any of the owners and/or tenants didn't give this permission, the map-sketch changes according to the given permissions) and the appropriate application to the regional authorities (the Council of Ministers in the Autonomous Republic Crimea, regional, Kyiv and Sevastopol local authorities) to get a permission for hunting land to use (such permissions are drawn in a form of appropriate regulations as for giving the hunting land to use); 5) the potential user applies the representation of getting hunting land in use to the State Agency of Forest resources in Ukraine, and adds the map-sketch of a possible hunting land, the owners' and/or areas tenants' permission, the regional authorities' regulation (the

Council of Ministers in the Autonomous Republic Crimea, regional, Kyiv and Sevastopol local authorities); 6) the potential user of hunting land applies to the regional authorities (the Council of Ministers in the Autonomous Republic Crimea, regional, Kyiv and Sevastopol local authorities) in order to get hunting land in use, addressing the area of this hunting land is located; 7) at the same time the State Agency of forest resources of Ukraine based on the given documents the potential user in addition to these applies presentation about getting hunting land in use; 8) the regional authorities (the Council of Ministers in the Autonomous Republic Crimea, regional, Kyiv and Sevastopol local authorities) take a decision about giving hunting land in use; 9) for a month after taking the decision the State Agency of forest resources of Ukraine and the tenant of hunting land make a contract about the term of hunting economy; 10) for a month after taking the decision the tenant of hunting land makes contracts about establishing natural resource easement with the owners and/or tenants of the areas where there is hunting land.

Besides, at appropriate stages the potential user of hunting land must apply to relative bodies with copies of the certificate about state registration of legal entity, certificates about enrolling in the Unified State Register of enterprises and organizations in Ukraine (it means, about signing mark USREO), incorporation documents. In the case of making legal the possibility of individual person-entrepreneurs to be a tenant of hunting land in the Law of Ukraine, such potential user of hunting land will have to give appropriate bodies the copies of certificates about state registration of individual person-entrepreneurs, passport, individual card of the person-taxpayer.

Actually, just this gradual order of giving hunting land in use is advisable to register in the Article 21, Article 22 of the Law of Ukraine "About hunting economy and hunting".

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## THE MEANING OF SERVICE CONTRACTS IN REFERENCE TO ANIMALS UNDER GERMAN AND POLISH LAW

### Introductory remarks

The legal regulations concerning animals as objects of civil law contracts of various types, in particular regulations of service contracts, do not constitute a popular point of interest among civil law scholars in Europe. Although the sale of animals sometimes appears a topic worthy of further consideration<sup>1</sup>, the issue of service contracts with reference to animals is rarely mentioned in the doctrine<sup>2</sup>. However, this topic should be covered, especially as respectively applying provisions concerning movables to animals<sup>3</sup> seems to be problematic<sup>4</sup>. Thus, there are no general rules on how to apply provisions covering

<sup>1</sup> At least under German law, see: J. Adolphsen, Tierkauf in: B. Dauner-Lieb, W. Langen, *BGB Schuldrecht. Nomos Kommentar*, 2012, pp. 1970–1971; J. Eichelberger, *Von neuen und gebrauchten Tieren – Zur Anwendbarkeit des § 475 Abs. 2 BGB auf den Tierkauf*, *ZGS* 2007, № 98, pp. 98–101; P. Rosbach, *Pferderecht*, München 2011; M. Sommer, *Der Pferdekauf*, Münster/Westfalen 2000; J. Wertenbruch, *Die Besonderheiten des Tierkaufs bei der Sachmängelgewährleistung*, *NJW* 2012, № 29, pp. 2065–2144.

<sup>2</sup> E. Fellmer, P. Kiel, *Rechtskunde für Pferdehalter und Reiter*, Stuttgart 1984; P. Rosbach, *Pferderecht*, pp. 139–188.

<sup>3</sup> See: Art. 1 of the Act on the Protection of Animals from 21 August 1997 (J.L. of 2003, № 106, item 1002) and § 90a BGB, which indicate directly that an animal is not a thing, therefore all rules applicable to things that are applied to animals must be applied appropriately, taking into account the differences between animals as living organisms, and other things.

<sup>4</sup> See, e.g.: M. Lubelska-Sazanów, *Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt*, "Transformacje Prawa Prywatnego" 2015, № 4, pp. 21–41.