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The Game Shooting District Lease Contract. Selected Issues

Umowa dzierżawy obwodu łowieckiego. Wybrane zagadnienia

SUMMARY

The game shooting district lease contract is one of the instruments for environmental protection. As part of leased hunting districts, hunting clubs are obliged to conduct hunting economy. The structure of the provisions regulating the institution of the lease of hunting districts causes that doctrine and jurisprudence still have not developed a uniform concept regarding its legal nature.

Keywords: hunting lease agreement; hunting club; hunting law; environmental protection

THE GAME SHOOTING DISTRICT LEASE CONTRACT AS AN ENVIRONMENT PROTECTION INSTRUMENT

Hunting traditions in Poland date back to the early Middle Ages when the right to hunting was basically granted to everyone. Over time, the right vested in everyone evolved and became a ruler's privilege: the hunting regale, which mainly concerned the hunting of the so-called "big game" (wisent, bear, aurochs, wild boar, red deer, fallow deer and moose)[1] within areas of restricted access which belonged to the ruler[2]. It seems that the first "provisions" on hunting governed only the issues of

[1] B. Waingertner, *Polowania w Polsce Jagiellonów. Z dziejów łowieckiego i dworskiego obyczaju*, „Przegląd Nauk Historycznych" 2004, nr 2, p. 178.

[2] A. Samsonowicz, *Uwagi o regale w Polsce Piastowskiej (na przykładzie regale łowieckiego i rybackiego)*, „Kwartalnik Historyczny" 1994, nr 4, p. 6.

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the very process of hunting, at that time regarded as part of culture, or the process of harvesting bones, meat and skin[3]. The scholarly literature on the topic presents views that propose to see in these medieval norms the beginnings of procedures aimed at protecting the population of certain species of animals[4]. However, this thesis seems to be far-fetched, because both the hunting regale and privileges of the nobility were tools used to protect the particular interests of the lords, not the formulas aimed at protecting the environment understood as the "public interest" of the Commonwealth[5]. According to A. Samsonowicz, the introduction of specific regulations in the field of hunting in medieval Poland could have resulted at most from a decrease in the population of the most valuable species of animals. It can, therefore, be assumed that the restrictions were motivated by the will to reserve for the ruler the right to hunting for the most valuable species: attractive due to the high value of meat, skin, antlers, which was also intended to further distinguish the ducal hunting as compared to other hunts[6], not a concern for the condition of the environment. This argument is confirmed by the wording of the ban on hunting on someone else's estate imposed by the King Stanisław August Poniatowski, which in the literature of the subject is considered as a monument among the former hunting regulations and at the same time as one of the first protective norms in pre-partition Poland. According to very wording of the ban:

> […] as benefits from their own estates and demesnes, and any revenue from these, cannot serve anyone but only their landowners, heirs and possessors, it is unlawful to deprive them of any part thereof. For these reasons, abolishing the unjust custom of hunting in someone else's forests, we hereby provide for as follows: from now on, no one shall be allowed to hunt on someone else's land,

[3] T. Mańskowski, *Prawo łowieckie w Polsce w wiekach średnich*, „Przewodnik Naukowy i Literacki" 1904, p. 515.

[4] For example, according to W. Radecki: "The ruler's hunting regale can be regarded as the original form of environmental law because it objectively restricted the acquisition of big game […]. Reserving the right to hunt for aurochs and wisents solely for the ruler was particularly important. […] Even if it is an exaggeration to assess that this was a reflection of the enlightened ducal will to protect those increasingly rare, most valuable animals for successors, indeed, the fact is that by 1381 no ecclesiastic institution had been granted an explicit privilege for hunting for aurochs and wisent. So the protection was real and many years later Russian Kartsov wrote, for good reason, that the Białowieża Forest and wisent owed their salvation to the Polish kings" (as cited in: R. Paczuski, *Prawo ochrony środowiska*, Bydgoszcz 1996, p. 254).

[5] According to A. Samsonowicz (*op. cit.*, p. 11): "[…] the hunting and fishing regale introduced to meet both the ruler's consumption and entertainment needs, by limiting the universal freedoms in designated lands and waters, probably the richest in fauna, contributed to the slowdown of excessive exploitation of this wealth. The subsequent obtaining of similar exclusive rights to hunting and fishing by landowners also inhibited to a certain extent the shrinkage of the resources of the game, although, like the regale, it was not intended to serve the nature, but the narrow interest of the privileged groups".

[6] *Ibidem*, pp. 8–9.

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and it shall not be allowed to shoot birds, under the penalty of confiscation of dogs, fowling piece and tools used for hunting […][7].

It is difficult to read from the passage quoted above a clear striving to protect the animal population, since the wording of the "provision" clearly indicates that the main idea of the ancient lawmaker was to make a norm to protect landowners from the depletion in the resources in their own land by third parties. Even though the validity of such norms led to the actual protection of animals and the environment, this condition appeared only as a reflection of actions aimed at safeguarding the individual interests of certain parties.

Only at the end of the 19th century, together with the formation of social organisations dealing with hunting matters, there are noticeable attempts to depart from the old understanding of hunting and to begin to promote the principles of rational hunting and point to their importance. R. Paczuski mentioned the following associations as the first organisations to promote the idea of hunting as environmental protection activities: the Municipal Hunting Society of Lwów (Miejskie Towarzystwo Myśliwskie z Lwowa; 1838), the Saint Hubert Hunting Society (Towarzystwo Myśliwskie im. Św. Huberta; 1876), the Society for Correct Hunting in Warsaw (Towarzystwo Prawidłowego Myślistwa w Warszawie)[8]. A special role in this respect used to be attributed to the Hunters' Society of Lesser Poland (Małopolskie Towarzystwo Łowieckie), founded in 1878 by the enthusiast of fauna of the region of Lesser Poland, Count Włodzimierz Dzieduszycki, who was recorded in the history of Polish hunting as the first social organisation aimed at implementing real protection of local game and strengthening the compliance with hunting laws by hunters[9]. Unlike other hunting societies, the Hunters' Society of Lesser Poland did not organise hunting and lease hunting grounds, but its main objective was to "improve hunting practices and the condition of the game"[10] through increasing public awareness.

The activity of the 19th-century organisations contributed to the popularisation of the idea of correct hunting. As early as at the beginning of the 20th century, similar hunting societies, associations and clubs[11] focused on running a rational

[7] *Volumina Legum*, t. 8, Petersburg 1960, p. 184.

[8] R. Paczuski, *op. cit.*, p. 253.

[9] S. Krogólski, *Pół wieku. Zarys działalności Małopolskiego Towarzystwa Łowieckiego 1876–1926*, Lwów 1929, pp. 15–16.

[10] „Łowiectwo Polskie: organ Towarzystwa w Poznaniu i Polskiego Związku Myśliwych na wszystkie byłe zabory" 1921, nr 3, p. 38.

[11] The Polish hunting organisations included in 1921 the following associations: Polski Związek Myśliwych w Poznaniu, Towarzystwo Łowieckie w Poznaniu, Polskie Towarzystwo Łowieckie w Warszawie (Nowy Świat), Małopolskie Towarzystwo Łowieckie we Lwowie, Klub Myśliwski w Bydgoszczy, Towarzystwo myśliwskie w Płońsku, Towarzystwo prawidłowego myślistwa w Ka-

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hunting resource management operated in most Polish cities. Despite the broad activity of hunting associations, at the beginning of the 20th century in Poland the approach to hunting as an integral element of environmental protection was still not sufficiently established, which clearly illustrates the A. Wysocki's thought: "[…] the condition of hunting in our country is critical as there is no awareness among the broad public that it is necessary first of all to protect, breed and then hunt for animals […]"[12]. Importantly, the assumptions made by hunting societies and circles were not explicitly articulated in the first hunting regulation issued in reborn Poland, i.e. the regulation of the President of the Republic of Poland of 3 December 1927 on hunting law[13]. Despite the lack of an explicit reference to pro-environmental values, E. Ejsmond, who was directly involved in the work on the draft regulation, assured that the new provisions were constructed with respect for environmental protection postulates[14]. The lack of proper highlighting of the environmental protection aspect in the said regulation was to be one of the reasons for the change in the system existing since the end of 1927 and the development of new hunting regulations by authorities of the Polish People's Republic[15]. Article 1 (1) of the decree of 29 October 1952 on hunting law[16] provided for that hunting meant planned management of game in accordance with the needs of the national economy and nature protection. However, the provisions of the decree of 1952 proved to be insufficient, which led to the adoption of the Act of 17 June 1959 on breeding, protection of game animals and hunting law[17], which partly duplicated the solutions known from the decree previously in force[18]. Although the new draft,

liszu, Żelichowskie Towarzystwo racjonalnego polowania w Żelichowie, Kieleckie Towarzystwo prawidłowego myślistwa w Kielcach, Kółko myśliwskie na powiat Siedlecki w Siedlcach, Towarzystwo myśliwskie powiatu Łaskiego w Pabjanicach, Łysakowskie Kółko myśliwskie w Łysakowie, Kałuszyńskie Towarzystwo myśliwskie w Kałuszynie, Polskie Towarzystwo racjonalnego polowania, Koło, ziemia Kaliska, Radomskie Towarzystwo Łowieckie w Radomsku, Towarzystwo praw myślistwa w ziemi Łomżyńskiej w Łomży, Koło Myśliwych gminy Góra powiatu Rawskiego, Koło włościańskie myśliwskie w Dąbrowie, Polskie Towarzystwo myśliwskie i hodowli zwierzyny łownej w Mławie, Płońskie Towarzystwo Myśliwskie w Płońsku, Towarzystwo Miłośników Myślistwa w Przasnyszu, Kółko Łowieckie Państwowego Instytutu Naukowego w Puławach, Towarzystwo Myśliwskie w Koninie, Towarzystwo Prawidłowego Myślistwa w Lublinie („Łowiectwo Polskie: organ Towarzystwa w Poznaniu i Polskiego Związku Myśliwych na wszystkie byłe zabory" 1921, nr 1, p. 3).

[12] „Łowiec Polski. Organ Centralnego Związku Polskich Stowarzyszeń Łowieckich" 1924, nr 1, p. 4.

[13] Journal of Laws 1927, No. 110, item 934 as amended.

[14] „Łowiec Polski: Organ Polskiego Związku Łowieckiego" 1927, nr 30, nfol.

[15] „Łowiec Polski: Organ Polskiego Związku Łowieckiego" 1952, nr 12, p. 4.

[16] Journal of Laws No. 44. item 300 as amended.

[17] Journal of Laws 1973, No. 33, item 197 as amended.

[18] Article 1 (1) of the Act on breeding, protection of game animals and hunting law. Hunting, as defined by the Act, shall mean rational management of game animals, in accordance with the needs

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like the previous one, was to represent certain values, including "ensuring proper organisation of game breeding and protection"[19], the community of hunters still considered hunting as an "exclusively sporting activity", which gives the hunter "a number of direct intangible benefits in the form of spending leisure time, contact with nature, sports training"[20].

The social perception is that hunting is still only a kind of hobby. However, the legislature has no doubts that it constitutes an important element of environmental protection, as expressed in the provision of Article 1 of the Act of 13 October 1995 – Hunting Law[21]. Hunting, as an element of protection of the natural environment, means protection of game (wildlife) and managing its resources in accordance with the principles of environment protection and rational economy. Further provisions specify that the main objective of hunting is the protection, preservation of diversity and management of game populations[22]. As regards the very construction of the Act, it should be noted that the aforementioned regulations have been placed by the legislature in Article 1 and Article 3 respectively, i.e. in the first text units of the normative act, which, in the light of the directive of *argumentum a rubrica*, may suggest a deliberate granting priority to the protective function and establishing it as the superior function in the Polish hunting law. Thus, the legislature revalued hunting and abandoned the tendency to bring the economic context of hunting to the fore, which was particularly emphasized in the People's Republic of Poland[23] and in the social context, which has been known since the Middle Ages.

Under further provisions of the hunting law, the implementation of the basic objective of hunting is made possible due to proper hunting resource management, which consists of the protection, breeding and acquisition of game in hunting regions by its leaseholders or managers. Therefore, undertaking executive activities in the field of hunting resource management, and thus the fulfilment of the protective function requires obtaining appropriate powers, which takes place through the conclusion of a contract of lease of a game shooting district. It should be stressed here that the hunting resource management in the Polish legal system has the form of a public model, because it is based on the assumption that it essentially is the responsibility of the state, and only its execution has been entrusted to the Polish Hunting Association (Polski Związek Łowiecki), which is obliged to cooperate on a permanent basis with, i.a., the central government and local government admin-

of agriculture and forestry and nature protection considerations.

[19] „Łowiec Polski: Organ Polskiego Związku Łowieckiego" 1959, nr 13, p. 2.

[20] *Ibidem*, p. 3.

[21] Journal of Laws 2018, item 2033 as amended, hereinafter: Hunting Law.

[22] Article 3 (1) of the Hunting Law.

[23] J. Skocka, J. Szczepański, *Prawo łowieckie. Komentarz*, Warszawa 1998, commentary on Article 1, thesis 2.

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istration[24]. The above allows concluding that the State Treasury leases out game shooting districts to hunting clubs primarily for the purpose of performing specific public functions aimed at performing environmental protection tasks, and not only socio-cultural functions for their members.

PROCEDURE FOR CONCLUDING THE GAME SHOOTING DISTRICT LEASE CONTRACT

Pursuant to Article 29 of the Hunting Law, parties to a game shooting district lease contract, depending on the nature of the game shooting district, include: Director of the Regional Directorate of the State Forests National Forest Holding (*Państwowe Gospodarstwo Leśne Lasy Państwowe*) or the Starost (poviat governor) (performing the task of central administration) and hunting clubs (or possibly the Polish Hunting Association)[25]. Therefore, the parties to the legal relationship include, on the one hand, a public administration body[26] acting on behalf of the State Treasury[27] and, on the other hand, a specific organisational unit, namely a hunting club. The introduction by the legislature of the norm referring, in matters not regulated in the Hunting Law, to the provisions of the Civil Code governing the lease

[24] Judgement of the Constitutional Tribunal of 10 July 2014, P 19/13, LEX No. 1483911.

[25] Where no hunting club is interested in leasing the game shooting district, until a hunting club submits an offer.

[26] In the literature on the subject, the concept of "public administration" is defined variously. According to R. Michalska-Badziak, the public administration is defined in the modern literature as an organisational unit of the entity concerned (state, local government), the classification of which takes into account certain elements such as: organisational separation, manner of action, authorisation to use sovereign measures, acting in the public interest, acting within the limits of powers granted by law (see R. Michalska-Badziak, *Pojęcie, cechy i rodzaje organów administracji publicznej, władza i urząd*, [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, red. M. Stahl, Warszawa 2016). M. Dąbrowski points out that the primary element for the recognition of a particular entity as a public administration body is its organisational and functional separation in the structure of public authority. According to the author, the organisational separation takes place where the provision of systemic law clearly prejudges that the entity concerned is an administrative body. Functional separation is carried out on the basis of norms of the substantive and procedural law by entrusting it with certain tasks and independent powers and the measures and tools necessary for their implementation. Based on the foregoing criterion, he assumed that, under certain circumstances, the starost (poviat governor) meets the doctrinal conditions for it to be regarded as a public administration body (see M. Dąbrowski, *Pozycja prawna starosty powiatowego, czyli ustawowe mydło i powidło*, „Przegląd Prawa Konstytucyjnego" 2015, nr 5, DOI: https://doi.org/10.15804/ppk.2015.05.05, p. 93). A similar position was put forward by P. Niemczuk (*Pozycja ustrojowo-prawna starosty*, „Administracja: Teoria, Dydaktyka, Praktyka" 2011, nr 1, p. 79).

[27] Opinia Ministerstwa Środowiska Departament Leśnictwa z dnia 26 stycznia 2010 r. (Opinion of the Ministry of the Environment, Department of Forestry of 26 January 2010), nr DL.gł.-024-7/4335/10/PJ, www.piotrkow.pzlow.pl/do_pobrania/wyjasnienie_ministra.pdf [access: 10.10.2019].

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agreement[28] implies the need to consider the lease of a game shooting district in the context of fundamental provisions of private law with taking into account the specific subject-matter and status of the parties to the legal relationship.

In Section II of the Act of 23 April 1964 – Civil Code[29], in the provisions of Articles 66 to 72[1], the legislature has regulated four methods to conclude an agreement. According to the legislature's intention, the lease agreement can, therefore, be concluded by an offer, negotiation, auction or tender procedures. In addition to typical procedures, mixed types are also present in practice: offer-and-negotiation, negotiation-and-offer and auction-and-tender procedures[30].

In the offer procedure, the central concept is an offer to be understood as a declaration of intent which is a firm proposal for the conclusion of a contract containing the relevant elements of the content of the legal act (*essentialia negotii*). The contract is concluded when the counterparty accepts the offer as proposed by the offerer. The literature on the subject excludes the possibility of effectively concluding an agreement where the offerer merely expresses interest in concluding the contract without making a firm declaration in that regard. A similar situation occurs when an incomplete offer is proposed, i.e. not containing all the elements necessary for the creation of a legal relationship[31]. Negotiations are based on the mutual interaction between the parties, as a result of which they jointly agree on the content of the agreement to be concluded, in particular the shape of its necessary elements[32]. As regards the auction and tendering, these are multi-party procedures of an elimination nature. The essence of auction and tender procedures is, therefore, in the selection of the most favourable offer of all those submitted by interested parties, by gradual elimination of the least attractive offers. Guided by this somewhat simplified characteristics of the types of procedures for the conclusion of the contract, one should state that it is not possible to clearly assess in what procedure the game shooting district lease contract is concluded and whether it is possible to carry out its correct classification under civil law.

The provisions of hunting law are fairly concise as regards regulation on the procedure for the conclusion of a game shooting district lease contract, boiling down merely to establishing the requirement for the submission of an appropriate application by the Polish Hunting Association to the authority authorised to sign the game shooting district lease contract and the obligation to consult the commune head (mayor, city president) and the competent agricultural chamber before leasing out the game shooting district. Some doubts may arise due to the fact that the Polish

[28] Article 29a (3) of the Hunting Law.
[29] Journal of Laws 2018, item 1025 as amended, hereinafter: CC.
[30] A. Kidyba, *Prawo handlowe*, Warszawa 2013, p. 881.
[31] Z. Radwański, A. Olejniczak, *Prawo cywilne. Część ogólna*, Warszawa 2011, p. 304.
[32] *Ibidem*, p. 310.

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Hunting Association is exclusively entitled to submit this application on behalf of and for the hunting club even though the hunting club has legal personality, so it should be capable of acting independently in applying for the lease of a game shooting district.

By the Act of 14 December 2017 on the amendment of certain acts to facilitate the control of infectious animal diseases[33], the pre-emptive right to conclude a game shooting district lease contract with the previous tenant was abolished[34], which also affected the shape of the process of concluding the game shooting district lease contract[35].

In the current wording of the Act, to conclude a game shooting district lease contract, the Polish Hunting Association, as an exclusively authorised entity, shall submit to the competent public administration body an application for the conclusion of the game shooting district lease contract. The application shall be submitted for and on behalf of a specific hunting club[36] and is a prerequisite for the validity of the contract being concluded[37]. In practice, however, this is done by the District Management Board, acting as the local body of the Main Board of the Polish Hunting Association[38]. In turn, the activities of the district management board are initiated by the hunting club submitting an application to lease out a given game shooting district to it. Then, in accordance with § 100 of the Statutes of the Polish Hunting Association, the application is consulted by a committee of at least three people on giving opinions on applications for the lease of game shooting districts, which is appointed by the district congress of delegates from among delegates to the national congress of delegates. Each member of the committee is the chief district

[33] Journal of Laws 2018, item 50.

[34] Postulates to remove the so-called priority rule from the hunting law were included in the government's draft Act amending the Act – Hunting Law and the Act on the amendment of the Act – Hunting Law of 15 November 2016 (Sejm Papers No. 1042, www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1042 [access: 10.10.2019]). The explanatory note to the draft indicates that the elimination of the pre-emptive right to conclude a game shooting district lease contract by the existing tenant will ensure the proper conduct of the hunting resource management. In the opinion of the draft proponent, the implementation of the pre-emptive right deprived the landlord of the possibility of effective enforcement of the obligations incumbent on tenants. The above argumentation was reproduced in the explanatory note to the government's draft Act of 14 December 2017 amending certain laws in order to facilitate the fight against infectious diseases, Sejm Papers No. 2114, www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=2114 [access: 10.10.2019].

[35] The Main Management Board of the Polish Hunting Association, in its position of 30 January 2018 (www.pzlow.pl/index.php/aktualnosci/233-stanowisko-zarzadu-glownego-polskiego-zwiazku-lowieckiego [access: 10.10.2019]), stated that the elimination of the principle of priority lease of a game shooting district to existing tenants will allow the district chief hunters to arbitrarily select new tenants when ignoring the existing ones.

[36] Article 29 (1) of the Hunting Law.

[37] Judgement of the Supreme Court of 19 September 2002, II CKN 978/00, LEX No. 56901.

[38] Article 32a (1) (8) of the Hunting Law.

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hunter of a given district. Designated representatives of the regional directorate of the State Forests National Forest Holding, the competent chamber of agriculture and commune heads (mayors, city presidents) may also participate as members in the work of the committee. The opinion of the committee is to be prepared in writing, and the conclusions contained therein are forwarded to the clubs, which may request their amendment by raising objections to them. Issuing a negative opinion by the committee closes the way for the hunting club to conclude a game shooting district lease contract, since the final opinion of the committee may not be appealed against[39]. On the other hand, the positive opinion of the committee is forwarded to the appropriate administrative body together with the hunting club's request to lease a specific game shooting district. Having received the necessary documentation, the body applies to the commune head (mayor, city president) for an opinion about the tenant, and these opinions are not binding on the landlord[40].

However, the hunting law quite precisely regulates the scope of the content of the game shooting district lease contract, stipulating that it should include in particular: the number and area of the game shooting district, the area of forest and agricultural land belonging to the game shooting district, the category of the game shooting district, the amount of rent for the district lease and the due date for its payment, the obligations of the contract parties, the rules for the use of alternative cull, the manner and time limits for settlements between the parties to the contract in the event of its termination. In addition, the Act precisely regulates the cases in which the agreement is terminated (also without notice period), the minimum game shooting district lease period and the general rules for determining the amount of lease rent, which have been further developed in the provisions of the regulation of the Minister of the Environment of 26 October 2018[41].

It is clear from the above considerations that the parties to a game shooting district lease contract have limited possibilities to independently shape the content of the legal relationship that arises as a result of their concluding the shooting district lease contract. The hunting club can only specify the game shooting district it wants to lease, but the other components of the contract, such as the amount of the rent, contract termination or the minimum term of the contract, have been imposed by the legislature. Therefore, the hunting club can only approve the conditions set out in the law and proceed to the conclusion of the contract. The general determination by the lawmaker of the content of the game shooting district lease agreement results in an almost complete exclusion of the freedom of contract. It is, therefore,

[39] §100 (6) of the Statutes of the Polish Hunting Association.

[40] B. Rakoczy, R. Stec, A. Woźniak, *Prawo łowieckie. Komentarz*, Warszawa 2014, p. 162.

[41] Regulation of the Minister of Environment of 26 October 2018 on detailed rules of determination of the amount of rent and participation of tenants of hunting areas in the costs of protection of the forest from game (Journal of Laws, item 2085).

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difficult to assume that it could have been concluded by auction, tendering or negotiation, if only because all potentially competing "offers" (bids, tenders) would have the same content, which would have objectively prevented the selection of the single most advantageous offer. Therefore, only the conclusion of a game shooting district lease contract in the form of an offer procedure can be considered. At this point, however, it should be noted that the game shooting district lease contract seems to be an adhesion agreement[42], which is not uniformly interpreted by Polish scholars. The literature on the subject formulates various, sometimes contradictory concepts[43], which undoubtedly makes it impossible to formulate a single, categorical thesis on the type of procedure of concluding a game shooting district lease contract. However, apart from the views characterising the nature and procedure of concluding an adhesion agreement, it should be noted that it is always treated as a contract of obligation, which is effected by the parties by submitting an offer and concluding an agreement. The State Treasury makes an offer to a limited circle: hunting clubs. Hunting clubs, on the other hand, decide by exercising their contractual freedom to accept the conditions proposed by the legislature and enter into a legal relationship created in this way. The element of voluntariness occurs only in relation to the will to establish a legal relationship, which leads to automatic classification of the game shooting district lease contracts as adhesion agreements within the meaning of civil law.

However, it seems that the analysis of the game shooting district lease contract should not be made in total detachment from the very rationale of hunting regulations. In this case, it should be considered insufficient any argumentation supporting the thesis that the game shooting district lease contract is a typical civil-law contract, especially when based only on wording of Article 29a (3) of the Hunting Law. The formulation of the above conclusion is a consequence of the firm view in the established scholarly opinion and case-law that despite containing certain public-law elements, the game shooting district lease contract is a civil-law contract.

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[42] P. Nowak-Korcz, *Dzierżawa obwodu łowieckiego w aspekcie translatologicznym*, „Comparative Legilinguistics" 2014, nr 17, DOI: https://doi.org/10.14746/cl.2014.17.6, p. 98.

[43] According to A. Czarkowska: "In the context of the Polish legal system, these acts [adhesion contracts – N.K.] are still classified as the group of contracts often based on the construction of offer and acceptance" (A. Czarkowska, *Umowy adhezyjne w administracji publicznej*, [in:] *Umowy w administracji*, red. J. Boć, L. Dziewięcka-Bokun, Wrocław 2008, p. 44). Adhesion agreements are sometimes considered a separate type of contracts, distinguished due to the manner of conclusion (accession) – as proposed by e.g. *Leksykon prawa cywilnego – część ogólna. 100 podstawowych haseł*, red. E. Bagińska, Warszawa 2011, p. 284; E. Skowrońska-Bocian, *Prawo cywilne. Część ogólna. Zarys wykładu*, Warszawa 2005, p. 184; K. Zagrobelny, [in:] *Zarys prawa cywilnego*, red. E. Gniewek, P. Machnikowski, Warszawa 2018, p. 284. There is also a view that "accession" is one of the manners of entering into a contract, apart from those regulated in Articles 66 to 72[1] CC. See C. Żuławska, [in:] *Kodeks cywilny. Komentarz*, t. 3, cz. 1: *Zobowiązania*, red. J. Gudowski, Warszawa 2013, p. 154.

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There is no doubt among scholars in the field as to the possibility of public administration bodies concluding civil-law contracts with entities which are not public administration. It should be noted, however, that it is generally accepted that in such cases public administration bodies exercise powers related to the disposal of specific assets (State Treasury's or local government's)[44]. However, hunting resource management covers all activities in the field of protection and breeding of animals. Therefore, the concept of hunting resource management cannot be limited only to the issue of game acquisition. Thus, the contractual authorisation of hunting clubs to pursue hunting resource management is demonstrated by that fact of assigning a kind of *dominium* to the hunting clubs by the State Treasury as a disposer of the nation-wide good, i.e wildlife, but also the imposition of certain obligations that are an emanation of the statutory and constitutional obligations of caring for game well-being. Therefore, the game shooting district lease contracts, on the one hand, touch the sphere of disposal of interests held the State Treasury, but on the other, it obliges hunting clubs to perform public tasks in the field of environmental protection[45], which would suggest treating them rather as administrative law (public law) contracts[46].

The analysis of the issues of the game shooting district lease contract, including in particular its content and the manner of conclusion, is reminiscent of the construction of a normative model contract known to the science of civil law. A normative model contract should be understood as a model contract that has been included in a normative act which is the source of law mentioned in the Constitution of the Republic of Poland[47]. The arbitrary determination of the contractual content by the legislature made the Constitutional Tribunal to express doubts as to the civil-law nature of such contracts[48]. However, as already mentioned before, hunting resource management combines elements of the sphere of state property management (*dominium*) and the sphere of performing public tasks. In this situation, the view that in the Polish legal system "some contracts still have a character that is difficult to define, because in fact, when performing public tasks, they have at the same time a clear civil-law dimension and have effects that can be considered in civil-law

[44] As proposed by, among others, J. Zimmerman, *Prawo administracyjne*, Warszawa 2018, p. 447; L. Bielecki, [in:] *Prawo administracyjne*, red. M. Zdyb, J. Stelmasiak, Warszawa 2016, p. 209; E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2018, p. 225; E. Stefańska, *Umowy zawierane w sferze administracji publicznej – wybrane zagadnienia*, [in:] *Umowy…*, p. 149; B. Jaworska-Dębska, *Umowy we współczesnej administracji*, [in:] *Umowy…*, p. 17.

[45] W. Daniłowicz, *Elementy publicznoprawne w prawie łowieckim*, [in:] *Prawo polowania*, Warszawa 2018.

[46] J. Boć, A. Błaś, *Umowy*, [in:] *Prawo administracyjne*, red. J. Boć, Wrocław 2010, p. 252.

[47] M. Leśniak, *Normatywne wzorce umów spółek handlowych w prawie polskim*, Warszawa 2017, p. 1; R. Trzaskowski, [in:] *Kodeks cywilny. Komentarz*, t. 3: *Zobowiązania. Część ogólna*, red. J. Gudowski, Warszawa 2018, p. 194.

[48] Judgement of the Constitutional Tribunal of 26 October 1999, K 12/99, LEX No. 38261.

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categories"[49] is becoming more and more valid. The multitude and diversity of views on the nature of contracts entered into by public administration bodies with entities remaining outside this structure, as well as unclear and heterogeneous criteria for their classification, undoubtedly make it difficult to determine the legal nature of the game shooting district lease contract.

SUBJECT MATTER OF THE GAME SHOOTING DISTRICT LEASE CONTRACT

The specific approach to the hunting economy determines the difficulty in defining the subject matter of the game shooting district lease contract. The literal wording of hunting law imposes the assumption that the subject matter of the game shooting district lease contract is regarded as an area of land of a consistent area enclosed within its borders, of not less than three thousand hectares, in which there are conditions for hunting[50]. Game shooting districts are created within a voivodeship (province) by resolution adopted by the provincial assemblies, taking into account the principles of: optimal satisfaction of the needs for the protection, preservation and development of preferred animal species, avoidance of division of reservoirs, determination of the course of borders using natural landmarks or clear markings in the area. The hunting law distinguishes forest and field game shooting districts[51]. It can, therefore, be concluded that the game shooting district must be understood as an administratively separate area of the country intended for the exercise of hunting, without areas excluded by a statute[52] or decision of the minister competent

[49] J. Szereniawski, R. Waszkiewicz, *Umowy zawierane przez organy administracji jako prawne formy ochrony zabytków. Księga pamiątkowa Profesora Eugeniusza Ochendowskiego*, Toruń 1999, p. 313.

[50] A. Suchoń, [in:] *Kodeks cywilny*, t. 3: *Komentarz do art. 627–1088*, red. M. Gutowski, Warszawa 2019, commentary on Article 693, thesis 15; W. Daniłowicz, *Obwody łowieckie w świetle wyroku Trybunału Konstytucyjnego z 10 lipca 2014 r.*, „Przegląd Prawa Ochrony Środowiska" 2016, nr 1, DOI: https://doi.org/10.12775/PPOS.2016.004, p. 72; Article 23 (1) of the Hunting Law. As provided for in paragraph 2, in special cases, as justified by the reasons for the rational hunting resource management and local field conditions, game shooting districts of a smaller area may be established, with the consent of the Minister competent for the environment.

[51] Article 24 (1) of the Hunting Law.

[52] In accordance with Article 26 of the Hunting Law, game shooting districts shall not include: national parks and nature reserves, with the exception of reserves or parts thereof where hunting has not been prohibited in areas designated in the conservation plan or conservation tasks; areas within the administrative boundaries of cities; however, where these borders cover larger forest or agricultural areas, game shooting districts may be established or may be incorporated into other game shooting districts; areas occupied by localities with other status than towns/cities, within the limits covering residential and utility buildings with backyards, squares and streets and roads inside these localities; buildings, plants and equipment, sites intended for social purposes, religious worship, industrial,

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for the environment[53]. According to the analysis of the rules of hunting law, game shooting districts cover also private property and, consequently, hunting clubs can operate in their areas in terms of hunting resource management as a result of the lease of a game shooting district.

The issue of the admissibility of establishing game shooting districts and the change of their borders, without the participation of the owners of the properties covered by these, was the subject of considerations of the Constitutional Tribunal[54]. By the judgement of 10 July 2014, the Constitutional Tribunal ruled on the inconsistency of the provision of Article 27 (1) and Article 26 of the Hunting Law with the provisions of Article 64 (1) in conjunction with Article 64 (3) and Article 31 (3) of the Constitution of the Republic of Poland and the loss of force of the existing unconstitutional provisions within 18 months of the date of publication of the judgement. In its grounds for the judgement, the Constitutional Tribunal stated that the inclusion of private property in the game shooting district entails numerous restrictions on the owner's full use of the object of ownership. According to the Constitutional Tribunal, those restrictions concerned all the basic owner's rights and are of a public nature resulting from a special administrative-law regime which was granted to game shooting districts. Although the provisions questioned by the Constitutional Tribunal have expired on 22 January 2016, it was not until the Act of 22 March 2018[55] when the legislature adapted the provisions of hunting law to the content of that decision. However, the revision did not lead to the exclusion of private property from the coverage of game shooting districts. The legislature introduced certain safeguards for the interests of land owners and perpetual usufruct holders in terms of granting the possibility of making remarks on the resolution of the provincial assembly on the division into game shooting districts and the possibility of seeking compensation for damage suffered by the owner or perpetual usufruct holder of the property due to covering their property within the boundaries of the game shooting district. In view of such legislation, it is difficult to assume that physically separated land could be the subject matter of the game shooting district lease contract, as this would be contradictory to the fundamental principle of private law as expressed in the legal maxim: *nemo plus iuris in alium transferre potest quam ipse habet*. The State Treasury could not let to hunting clubs the land to which is does not have the ownership right. The concept of including private property in the shooting district lease should, therefore, not be read literally, but as

commercial, storage, transport and other business purposes and facilities of a historic and special nature within the limits of their fences.

[53] Article 28 (2) of the Hunting Law.

[54] Judgement of the Constitutional Tribunal of 10 July 2014, P 19/13, LEX No. 1483911.

[55] Act of 22 March 2018 amending the Act – Hunting Law and certain other acts (Journal of Laws, item 651).

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a specific mental shortcut specifying that the property concerned has been covered by the right of hunting in this area[56].

A concept is also put forward in the literature on the subject that the subject matter of the game shooting district contract is not a game shooting district considered as an area of land, but in fact the right to hunt or the right to exercise hunting resource management[57]. Unfortunately, a unified position on this matter has not yet been reached[58]. It should be noted here that hunting resource management is an activity in the field of game conservation, breeding and acquiring. Assuming, therefore, that the subject matter of a game shooting district lease contract is the right to hunt seems to shallow and limit the concept of hunting resource management only to the aspect of game acquisition from areas covered by the district.

LEGAL CHARACTER OF THE GAME SHOOTING DISTRICT LEASE CONTRACT IN THE LIGHT OF CASE-LAW

The analysis of the case-law of recent years allows us to conclude that in judicature, just like in literature, a coherent and uniform position has been developed in the field of legal qualification of the game shooting district lease contract, although the regulations governing this matter have not undergone any major change since the Act of 1959 was in force.

Under the Act of 1959, the Supreme Administrative Court in Warsaw of 14 September 1983[59] ruled that the game shooting district lease contract is a civil-law insti-

[56] "Inclusion of the property in a game shooting district" is a mental shortcut which, however useful, distorts the legal qualification of the mechanism of establishing game shooting districts. In reality, it is not land estate but the right of hunting on this estate that is included in the game shooting district. See W. Daniłowicz, *Obwody łowieckie*..., pp. 73–74.

[57] The issue of the subject matter of a game shooting district lease contract was addressed by, among others, M. Drela, who is of the opinion that the subject matter of a game shooting district lease contract is actually the right to hunt. In her assessment, this right consists in the possibility of the use of land estate by conducting hunting activities, and the benefits are in the form of game acquired (see M. Drela, [in:] *Kodeks cywilny. Komentarz*, red. E. Gniewek, P. Machnikowski, Warszawa 2017, commentary on Article 693, thesis 28). On the other hand, J. Szachułowicz assumes that the subject matter of game shooting district lease contract is "the right to carry out the hunting resource management, including the right to hunt" (see J. Szachułowicz, *Problematyka prawna dzierżawy obwodów łowieckich*, „Przegląd Sądowy" 2002, nr 4, p. 50; this view is shared by P. Nowak-Korcz, *op. cit.*, pp. 95–96). A. Lichorowicz is of the opinion that the subject matter of game shooting district lease contract is not the district itself but the right to acquire game, related to the district (see A. Lichorowicz, [in:] *System Prawa Prywatnego*, t. 8: *Prawo zobowiązań – część szczegółowa*, red. J. Panowicz-Lipska, Warszawa 2011, commentary on Article 693, thesis 22).

[58] W. Daniłowicz, *Obwody łowieckie*..., p. 74.

[59] Judgement of the Supreme Administrative Court of 14 September 1983, II SA 812/83, LEX No. 1687775.

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tution, not an administrative-law one. In the opinion of the Supreme Administrative Court in Warsaw, the provisions of the hunting legislation regulated the issue of the game shooting district lease contract separately from the provisions of the Civil Code, which in its opinion should be read as identical nature of the institutions of the game shooting district lease contract and the lease regulated by the provisions of the Civil Code. An analogous conclusion was reached by the Supreme Court on the grounds for the judgement of 9 July 1999[60]. Over time, however, this position was negated by the Supreme Court, which in its grounds to the judgement of 19 September 2002[61] stated that "the game shooting district lease contract, despite its name suggesting a strictly civil-law character, in fact has specific features distinguishing it from the lease contract as regulated in Article 693 ff. of the Civil Code".

Interestingly, the Voivodeship Administrative Court in Lublin in the decision of 3 December 2009[62], invoking the "established case-law" and citing two decisions of the Supreme Court, i.e. the judgement of 19 September 2002 (II CKN 978/00) and the judgement of 9 July 1999 (III CKN 98/99), formulated the categorical opinion that the game shooting district lease contract is a civil-law contract, although the Supreme Court in the grounds for the first of these rulings expressed a different position, while in the second it did not present any argumentation to support this thesis.

The same court presented a slightly different view on its grounds for the judgement of 25 February 2010[63]. The Voivodeship Administrative Court in Lublin assumed that the features of the game shooting district lease contract do not allow it to adopt the thesis that this contract is a classic civil-law lease contract. Although the court, following K. Heliniak[64], assumed that the game shooting district lease contract is an administrative contract forming part of the legal means of administrative action, in the further part of the grounds for the judgement, describing the game shooting district lease contract, for completely incomprehensible reasons used the phrase "civil-law lease contract", which was otherwise known from the court's previous jurisprudence, for example from the reasoning of the judgement of 26 November 2009[65].

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[60] Judgement of the Supreme Court of 9 July 1999, III CKN 98/99, LEX No. 37926.

[61] Judgement of the Supreme Court of 19 September 2002, II CKN 978/00, LEX No. 56901; judgement of the Supreme Court of 9 July 1999, III CKN 98/99, LEX No. 37926; decision of the Voivodeship Administrative Court in Lublin of 3 December 2009, II SAB/Lu 83/09, LEX No. 632395.

[62] A similar view was presented also in the decision of the Voivodeship Administrative Court in Lublin of 3 December 2009, II SAB/Lu 83/09, LEX No. 632395.

[63] Judgement of the Voivodeship Administrative Court in Lublin of 25 February 2010, II SA/Lu 657/09, LEX No. 634475.

[64] K. Heliniak, *Administracyjnoprawne aspekty łowiectwa jako elementu ochrony przyrody*, Rzeszów–Lublin 2003, pp. 208–209.

[65] Judgement of the Administrative Court in Lublin of 26 November 2009, III SA/Lu 340/09, LEX No. 588112.

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The views of the Voivodeship Administrative Court in Lublin had changed and in the decision of 6 May 2013[66] the court again stated that the game shooting district lease contract is clearly a civil-law contract, which was to be evidenced by the fact that the activity of the Polish Hunting Association is financed from their own funds, an entry fee, inheritance and donations as well as income from business activities, and thus does not dispose of public property. As assessed by the court, since the provisions of the hunting law provide for that the game shooting district lease contract should specify the rights and obligations of the parties, as well as the amount of rent for lease of the game shooting district, then the game shooting district lease contract is a civil-law contract regulated by the provisions of Articles 693 to 709 of the Civil Code.

The Constitutional Tribunal ruled quite differently[67], denying the civil-law nature of the game shooting district lease contract and assuming, following the R. Stec's view[68], that the game shooting district lease contract was of an administrative-law nature. This belief was based on the fact that, although the legal relationship under consideration can only be established by concluding an appropriate contract, the content of the game shooting district lease contract does not conform to the content of the contractual relationship arising from entering into a lease contract. According to the Constitutional Tribunal, both the rights and obligations of the parties to the relationship are in the form of public-law rights and obligations, which boil down to the right and obligation to carry out hunting resource management.

Although it would seem that the Constitutional Tribunal's detailed position should result in harmonisation of the established case-law, in fact the judicature continues to formulate positions expressing the conviction of civil-law nature of the game shooting district lease contract[69].

It seems that the prevailing opinion in the case-law is that the game shooting district lease contract is a civil-law contract. But it is still characteristic, however, that the correctness of that view is being proved in the judicature quite tersely. It is noticeable that there is no substantive argument which unequivocally confirms the reasons behind that assumption, and the resorting by courts only to the laconic and unconvincing argument of "well-established thesis in the case-law" seems still to be insufficient.

[66] Decision of the Voivodeship Administrative Court in Lublin of 6 May 2013, II SO/Lu 4/13, LEX No. 1320032.

[67] Judgement of the Constitutional Tribunal of 10 July 2014, P 19/13, LEX No. 1483911.

[68] R. Stec, *Uprawianie łowiectwa i prowadzenie gospodarki łowieckiej. Uwarunkowania administracyjnoprawne, cywilnoprawne i organizacyjne*, Warszawa 2012, pp. 69–70.

[69] Decision of the Voivodeship Administrative Court in Olsztyn of 17 October 2014, II SA/OI 889/14, LEX No. 1547065; decision of the Supreme Administrative Court of 4 February 2015, II GSK 54/15, LEX No. 1657703.

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STRESZCZENIE

Umowa dzierżawy obwodu łowieckiego jest jednym z instrumentów ochrony środowiska. W ramach dzierżawionych obwodów łowieckich koła łowieckie są zobowiązane do prowadzenia gospodarki łowieckiej. Konstrukcja przepisów normujących instytucję umowy dzierżawy obwodów łowieckich powoduje, że w doktrynie i judykaturze nadal nie wypracowano jednolitej koncepcji w przedmiocie jej charakteru prawnego.

Słowa kluczowe: umowa dzierżawy obwodu łowieckiego; koło łowieckie; prawo łowieckie; ochrona środowiska