

THE HUNTING RIGHTS IN CZECH HISTORY

Karolina Adamová*, Vendulka Valentová**

Abstract: The authors briefly visit the history of hunting and gamekeeping in Czech lands from the legal perspective. They focus especially on the laws of the 19th century. In detail they discuss the individual provisions of the Hunting Act for the Czech lands from 1866 and thus describe the conditions for hunting in the Czech lands.

Keywords: hunting, game keeping in history

The roots of human activities defined by the term **hunting** reach far to the past, all the way to the Paleolithic Era when the walking man, the Homo erectus, gradually evolved. Hunting was his main way of obtaining sustenance.

Only with the onset of pastoral farming and agriculture, accompanied with the domestication of many plant and animal species, hunting became a complementary activity in obtaining food and also acquired new social content. It has gradually become the domain of life necessities and interests of the leaders in the individual social structures – rulers and their entourage, which gradually formed into aristocracy. And aristocracy started connecting hunting with game keeping, i.e. with a specific set of activities aimed at systematic protection, breeding and using of game, including the economic effect of the catch.

Many publications were written in the Middle Ages and later about the benefits of hunting for the life of aristocracy and the ruler. For example, in 1982 Wolfgang Helms von Holberg published book “Georgica curiosa – Von Dem Adlichen – und Feldleben”, in which he concludes that hunting is for aristocracy not only “valiant chivalrous exercise, but also *praeludium belli* (prelude for war). Through hunting aristocrats learn to outsmart and outpace game, skillfully use stabbing and fire weapons, on foot and on horseback, withstand cold and suffer heat, rain and adverse weather, bear thirst and fatigue and protect own and neighboring lands from predatory animals.”¹

Hunting enjoyed similar popularity also at the royal and princely courts. “It refreshed mind, drove away melancholy, it was the enemy of idleness, aided health, exercised the body, precluded and mirrored the war and also provided for good and hearty meal.”²

In the Czech lands rulers surrounded themselves with numerous hunting parties as early as in the beginning of the 11th century. To facilitate hunting they were building hunting fences in large forests, e.g. Křivoklát (year 1109), Jívno, Zbečno, Jenčov, Týřov, Nový Hrad u Kunratic (year 1411).

Hunting and game keeping were governed by various orders that gradually took the form of written legal norms. In particular this was the case of the Land Codes of 1530, 1543 and 1564.³

* Professor JUDr. PhDr. Karolina Adamová, DSc., Faculty of Law, University of West Bohemia, Pilsen, Czech Republic

** JUDr. Mgr. Vendulka Valentová, Faculty of Law, University of West Bohemia, Pilsen, Czech Republic

¹ HOF, U. I. *Evropa a osvícenství*. Praha 2001, pp. 28 an.

² VERNON, J. *Volný čas ve středověku*. Praha 2003. O myslivosti jako zábavě šlechty. Část II., pp. 49–83.

³ JIREČEK, J., JIREČEK, H. (eds.). *Zřízení zemská království Českého XVI. věku*. Praha 1892; ZZ z roku 1530, art. 206 – 207, ZZ z roku 1549, V 21 – 26 a ZZ z roku 1564 T1 – T7; JIREČEK, H. (ed.). *Codex Juris Bohemici*. Praha 1883, XLVIII – LVII.

After the Czech Estates Rebellion against the Habsburg dynasty was defeated during the Battle of White Mountain (year 1620) new legal foundation was created for hunting and game keeping – Restored Land Code of 1617.⁴ This was at a time when Czech aristocracy was being deprived of their property, banished into exile and replaced with aristocratic families from Saxony and other parts of Germany. These families were rewarded for political, military and church services to the Habsburg monarchy with vast estates and privileged status.

In 1641 Ferdinand III issued the “Hunting Rules for the Czech Lands”, in which he ruled that hunting is to be an amusement for the aristocracy and subjects were obliged to perform *corvée* (unpaid forced statute labor). At the same time various letters patents against poaching were issued.

Only after the Emperor Joseph II came to power the situation partially improved. In 1781 the Serfdom Patent was issued and in 1786 the general Hunting Patent, relieving the peasants from game keeping *corvée* and governing the protection of field crops, as well as compensations for damage caused by hunting. The hunting right was declared to be the right of the state and as such it could be conferred to individuals interested in hunting to use and fulfill it.

However, the real milestone in the development of modern rights throughout the Habsburg monarchy was the imperial patent No. 154 of 1864, which in its first section revoked hunting rights on foreign land. This was a radical change from the earlier situation when hunting and game keeping rights were granted only to nobility.

The principle that hunting rights are linked with the ownership of land was later also confirmed in the Hunting Act for the Czech lands issued on 20 August 1866 in part XIII of the Land Code 49, effective from 21 September of the same year. Also, in article 1 it specified how hunting rights may be used. Although the Czech Hunting Act does not specifically define hunting rights, it is assumed that article 2 of the Moravian and article 1 of the Silesian hunting acts can be used for that purpose. These two acts state that the hunting rights are granted solely to the owners or tenants of hunting grounds. This includes the right to keep, hunt, catch, kill game animals in the given game reserve, as well as keep found parts of animals (e.g. dropped antlers or eggs of feathered game).

Game keeping was defined in the act as a continuous “breeding of game aimed at achieving considerable numbers of high quality animals and preventing all that is contrary”.⁵

According to this legislation “game” includes large game, fallow deer, deer, hare, grouse, partridge, pheasant, bustard, peewit and various species of woodcock, rails, wild goose, ducks and fieldfare. This list is incomplete, but generally hunting respected customs.⁶

The Hunting Act of 1866 for the Czech Lands distinguishes hunting a) individual, b) communal and c) enclave.

According to article 2 only the **possessor of continuous land** with area of at least 115 ha may exercise individual hunting rights. Continuous lands for hunting are such lands,

⁴ JIREČEK, H. (ed.). *Codex Juris Bohemici*. Praha 1883, QXLVIII – LVII.

⁵ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 11. ANDERS, J. *Das Jagd und Fischereirechts*. Innsbruck 1884.

⁶ BURŠÍK, J. *Učebnice pro školy sborů uniformované stráže*. Praha 1923, p. 118.

which can be reached from one to another without crossing foreign land. The act also ruled that roads, highways, railways, streams and rivers crossing the hunting ground are not considered breaches of this continuity.

The important part was that in practical considerations of the Supreme Administrative Court in Prague the hunting rights were not based on **actual ownership** but rather on **land tenure**, i.e. on real control of a person over lands, connected with the will to keep them as own. It was not possible to use the provisions of the general Civil Code Budw. 8655/1895 because the Administrative Court in Vienna considered actual ownership a necessary condition of hunting rights.⁷

Hunting rights were according to the law not to be granted only to a single person (natural or artificial) but also to several persons, e.g. the heirs.

As for the establishment of the hunting right; it was sufficient that an authority declared all conditions fulfilled and stated a date from which the right was granted.

The second form of exercising hunting rights on own land was defined in the fourth section of the act as **hunting community**. It stipulated that such community can be created wherever land tenants in certain settlement (see section 107 of the Municipal Order of 1864) have continuous lands of combined area at least 115 ha.

In practice, the Supreme Administrative Court in Prague considered only persons who not only had tenure of the lands but also residential homestead in the settlement (i.e. persons residing in the settlement in a house with a house number) to be tenants of hunting community lands.

The rights of the hunting community may not exceed the limits of the settlement. Each hunting settlement has its own hunting community and, according to the law, it is not possible that one hunting community is established across several settlements (Budw. 4778/1889).

A hunting community was represented by a committee elected by the settlers for six years. The committee had to either lease out the hunting grounds or carry out the tasks connected with the managing of hunting grounds directly via “experts appointed for the purpose”. Net proceeds from the hunting grounds were divided among the tenants of the lands, proportionally by the area.

Czech Hunting Act of 1866 ruled in section 5 that if the total area of lands of all residents of certain settlement was smaller than 115 ha, the hunting and game keeping rights are exercised by the tenant of the nearest hunting grounds (sections 2 and 4), or hunting grounds that completely or partially surround the lands. In this manner **enclaves** are formed as the third way of exercising the hunting rights.

The hunting rights are assigned (as per section 5) to the tenant of the enclave land by the district authority, which can also take the necessary measures in case the tenant of the hunting plot nearest to the plot assigned for hunting (or surrounding it) does not want to exercise hunting rights on his plot (section 2).

According to the decision No. 5675, Budw., 6842 A from 1909, when assigning enclave for hunting, it is irrelevant where the enclave tenant resides. If the enclave was assigned to him with his consent, he may not relinquish his hunting and game keeping rights before

⁷ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 13.

the six-year period defined in section 17 of the Hunting Act. (This was later confirmed by the decision No. 8970, Budw., 6925A from 12 October 1909).⁸

According to section 8 of the Hunting Act, the hunting and game keeping rights of a hunting community are exercised by a committee with 3-5 members, which also elects mayor. Only members of the hunting community with not only plots, but also housing numbers may vote and be elected – and this includes women.

The committee may pass resolutions if more than half of the members are present together with the mayor. This was confirmed by a decision No. 10.050, Budw., 2000 A from 2 October 1903. The hunting committee was elected for 6 years, but in practice (and later confirmed by decision Boh. 315/1920) the committee kept its power until a new committee was elected. The reason of this provision was the fact that it was the only body authorized to represent the community in all legal relations, administer the hunting grounds according to the law and receive orders from the district council.⁹

According to section 9, the elections of the hunting committee are managed by the mayor of the municipality (based on section 15 of Czech Municipality Code), i.e. not the settlement. Managing the elections requires carrying out all tasks connected with the elections, such as notice, invitation, compiling the list, overseeing the voting, ensuring election results etc.

In case there was an insufficient number of community members present for valid elections summoned under section 9, it was necessary to call new elections. However, those who arrived may pass valid resolutions regardless of the contents of part b), section 9.

Rather complicated was the method of attributing votes to the members of a hunting community. Members with less than 4 ha received one vote. Tenants with plots between 4 and 8 ha were awarded two votes and so on – 4 ha more meant one additional vote. However, under section 11, no single member was allowed to hold more than half of all votes of the community. The elections were based on the principle of absolute majority.

It was the task of the elected committee of the community (under section 13) to decide whether the hunting rights of the community are to be leased out or not. In case of a lease it was necessary to decide whether the leaseholder would be selected directly or through competitive bidding, which was then organized by the mayor.

In case the hunting committee decided to lease the hunting rights directly it had to offer the interested parties enough time to understand the conditions and apply. The election committee was not bound by any bid and could choose freely. However, it was important to ensure rational operation of the hunting region. At the same time it had to care to minimize the damage done by the game and hunting and maximize the benefits of hunting for the owners of the lands leased as hunting grounds.

According to section 17 of the Hunting Act for the Czech Lands the hunting rights for the lands belonging to the hunting community and enclaves were leased for at least 6 years. In case the lease was to exceed 12 years it was necessary to obtain an approval from the district authority.

Every applicant interested in leasing hunting rights was under section 18 obliged to hand in security deposit **vadium** (security required of the bidders during auctions, which

⁸ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 38.

⁹ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 54.

confirms the ability to pay). The security amount was the same as the opening price and it was either to be provided in cash, in the form of savings books or public securities based on the latest stock exchange prices. The bidder with the highest bid became the leaseholder. After the bidding the winner had to immediately pay the bidding expenses and the deposit, which was to be equal to the annual lease and paid to the mayor, who managed the bidding. The mayor was obliged to deliver this within eight days to the district authority.

The auction was carried out in accordance with the Auction Rules No. 565 Col., from 15 July 1786, confirmed under No. 101 Col., on 14 September 1815.

An important part of the hunting act was the provision on the division of net profit among the tenants of the plots. Net profit was defined as the amount left from the lease or from revenues for killed game, after deducting administrative expenses and compensating for the damage caused by the game, unless the committee assigned damage liability in the contract to the leaseholder.¹⁰

In case the hunting was managed by a specialist, also his remuneration was deducted from the net profit, as well as the wage of beaters etc. Only members of the hunting community were entitled to a share from the net profit. Under Budw. 3228 from 1886 the hunting committee had no right to dedicate the proceeds for municipal and other purposes.

The hunting committee calculated the net profit and, based on the area of plots, proposed the shares for individual members. If the committee failed to do so, or in case of a dispute, the Hunting Authority was entitled to divide the net profit (based on decision Budw. 8120 from 1894).

General responsibilities and competencies of the district authority in matters related to the hunting rights were defined in section 23 of the Hunting Act for Czech Lands. The purpose of this provision was to ensure “that provisions under sections 2, 4, 6, 8 through 22 are duly carried out”. The district committee was the first stand; appeals were handled by the regional committee (under section 77 of the Czech law on District Representation from 25 July 1864, number 27 Col.).¹¹

Besides being the supervisory authority, the district authority has under section 23 of the Hunting Act also the following duties:

- Under section 3 decides whether fencing around the plots is sufficient;
- Under section 5 assigns enclaves and takes measures in case the authorized entity rejects this assignment;
- Under section 6 gives permission to lease out parts of the hunting grounds;
- Under section 7 specifies compensation for assigned plots;
- Under section 17 approves the lease of hunting grounds for periods exceeding 12 years;
- Under sections 18 and 20 accepts bidding deposit and returns it after the guarantee period;
- Under section 21 approves rounding of hunting ground in case rounding would reduce the hunting ground below the legal area;
- Under section 26 b) and e) issues hunting tickets and receives hunting fees;

¹⁰ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 131.

¹¹ *Ibid.*, 143.

- Under section 26 g) issues payment orders for unpaid hunting fees and enforces payments;
- Under section 27 issues hunting certificates to the forest protecting personnel;
- Under section 30 revokes hunting tickets and certificates in cases specified therein.¹²

The question as to who has the right to personally hunt is answered by section 24 of the Hunting Act. Firstly, it is the owner or tenant of the hunting grounds or an officially assigned hunting expert in the given hunting district. Secondly, the gamekeepers under oath working for the master of the hunting grounds or the hunting community. And thirdly, guests invited for a hunt.

Who has during a hunt the status of a guest is explained by the subsequent section. It is any person with a ticket for hunting and a permission to hunt from the master of the hunting ground. A guest hunting without the master of the hunting ground who is unable to show a written permission is committing an offence (under section 42 of the Decree No. 10 Col., issued by the Czech governor on 22 February 1877). Servants permitted to assist with the hunt and carry out game keeping taken under oath receive instead of hunting tickets certificates for the hunt, valid for the time of the service.

The relevance of the contents and method of issuing hunting tickets is evidenced by seven paragraphs of section 26 of the Hunting Act.

The first stipulates the principle that nobody may hunt without a hunting ticket issued by the competent authority or without a certificate that substitutes such ticket under section 27. The owner must keep the ticket always with him and present it upon request from public safety authorities.

The second paragraph of section 26 stipulates that hunting ticket is issued by the district authority competent for the district, where the applicant has regular residence, with the exceptions of Prague and Liberec, where the city council is the competent authority. Persons without residence in the Czech Lands will be issued hunting tickets by the district authority (or city council) of the place, in which they currently reside.

The third paragraph of section 26 contains a provision stipulating that a hunting ticket is only valid for the person, in whose name it is issued and that it is valid for the all Czech Lands.

The fourth paragraph of section 26 in detail addresses the questions of the time limitation of hunting tickets and fees for issuing them. The validity period of a hunting ticket can be one calendar month or one year, but also three consecutive hunting years.

The master of the hunting ground will charge a fee of 50 Koruna and hunting guest 30 Koruna for issuing a hunting ticket for one month.

The fee for issuing a hunting ticket for one hunting year for the master of the hunting ground was 150 Koruna and for a hunting guest 100 Koruna. For issuing a ticket for three hunting years the master of the hunting ground paid besides the stamp duty 400 Koruna and a hunting guest 250 Koruna.

The fees for the hunting tickets were collected, as per the fifth paragraph of section 26, by the competent district authority (city council). In February of each year 75 % of the pro-

¹² Other competencies of district Offices in the area of hunting were enshrined in later Acts and Decrees mainly in the era of the new Czechoslovak Republic.

ceeds were paid to the Land fund and 25 % to district's treasury (in Prague and in Liberec to the municipal treasure).

The sixth paragraph addresses only the technical aspects of the creation, splitting and paying for hunting tickets, while the seventh paragraph (section 26) stipulates the sanctions for failure to carry out the duties related to the administration of the hunting tickets.

If somebody avoids the duty to obtain a hunting ticket, he should receive a payment order from the district authority (city council) to pay within 14 days to the district (city) treasure 150 Koruna – for the master of the hunting ground, 100 Koruna for a guest and 300 Koruna for a foreigner. If failed to pay the amount within 14 days from the maturity of the payment order, the city council shall request enforcement through political seizure.

In sections 28 through 30 the Hunting Act for Czech Lands deals with the rules for selecting persons who can be issued a hunting ticket and from whom it must be withdrawn. It may not be issued to the following persons:

1. Under-age persons, students of schools and academies and hunting youth (exception being in the first case if requested by the father or custodian, in the second case school director and in the third case by the master of the hunting ground or the keeper of the forest district);
2. Mentally ill persons and notorious drunkards;
3. Poor people living on municipal pensions or in charitable institutions;
4. Workers working for daily or weekly wage;
5. Persons without license to bear arms;
6. Persons convicted of a violent crime against persons or property (less than ten years after the punishment), and also those, who committed a life-threatening offence by carelessly handling a firearm or committed a theft, defalcation or fraud;
7. Persons who were punished for misusing a hunting ticket (for three years after committing the offense).

Game keeping, as a permanent and purposeful activity aiming at breeding high quality game, requires that hunting takes place only during defined periods. For this reason the Hunting Act stipulated that “hunting, killing and catching game, collecting eggs of birds that are to be spared” is forbidden between 1 February and 31 July. However, this does not apply to fallow deer, large and black game in game reserves.

During the closed season it is possible to shoot only a) nuisance wildlife, unless protected by the law; b) from 1 March until the last day of May “woodcock, grouses, partridges and sparrows”; c) from 1 March until 31 January wild goose and ducks and d) from 1 May until 31 January deer.

On top of all this the Hunting Act also takes care of protecting the crops of farmers on plots that are a part of the hunting districts. Before the crops are harvested it is forbidden to hunt and release hounds on these plots, with the exception of plots with potatoes and beet. Hunting ban also does not apply to meadows (as pointed out by decision No. 934, Budw., No. 492 from 17 May 1879, valid also for Czech lands.

Related to this, there are several sections dedicated to the legal regulation of the protection against certain undesirable encroachment with land ownership:

First: wounded animals can be followed to another plot only if permitted by the person with hunting rights for that plot;

Second: wild boars (black game) can only be kept in enclosed preserves so that the animals cannot escape;

Third: black game, wolf, bear and other nuisance animals wandering outside of the preserve may be killed by any person, whose property or life is threatened by them;

Four: everyone has the right to protect own plots from game using clappers, scarecrows and fences. Animals can be driven out (scared away) from vineyards and gardens by warning shots;

Five: an owner who allows a dog to hunt in another hunting ground will be fined 1 and 4 Koruna. The master of the hunting ground has the right to kill the dog, but only when the dog is at least 380 m from the nearest house or hunts without his owner;

Six: The master of a hunting ground can kill a cat (himself or his staff), if found wandering at least 380 m from the nearest house.

This is related to the provisions from sections 34 and 35 on the sale of game during the hunting season; from the fourteenth day since the beginning of the closed season it is not permitted to sell protected animals. As explained in more detail by J. Musil in the above cited book “Hunting Act for the Czech Lands”, the ban applies to all protected animals, alive or dead, whole or in parts, regardless of whether sold by the master of the hunting ground or his staff or by a venison dealer. This also includes venison sold in pubs.

Also during the hunting season, every person selling venison must have a delivery ticket for the meat. This provision was later elaborated in decision Budw. No. 4474/1889 so that not only venison tradesmen, but all persons selling venison were obliged to have the delivery ticket.

This ticket is issued by the master of a hunting ground or, at his order, “an appointed game keeper”. The ticket contains the name of the hunting district, number of animals and also year and day, on which the ticket was issued. It was important for the food tax. All animals brought in for sale without a ticket were to be confiscated by the supervising public authorities (originally donated to the local fund for the support of the poor, later, under section 11 of the Act on the Organization of Political Administration No. 125/1927, kept by the state).

An important part of the Hunting Act was the right of the land owners to claim compensation for damage caused by hunting and game. Section 43 states that damage from hunting is to be compensated by the master of the hunting ground. Damage caused by the animals was to be compensated by the hunting community or, if the damage was within an enclave or on plots ordered for hunting, it was to be compensated by the person holding the hunting rights.

Unless a contract on the lease of hunting ground or similar such agreement between two parties contained specific provisions, compensation for damage was to be determined by a court of conciliation.

Damage caused by animals on land and on un-harvested crops, including trees gnawed or uprooted by animals, will be compensated by the hunting community also in case the damage was caused by animals that escaped from foreign game preserve.

Compensation for damage caused by animals in enclaves will be paid by the person who was ordered the enclave under section 5, i.e. the tenant of the hunting ground. Damage incurred during a hunt organized by the community will be paid by the community and not by the tenant.¹³

The procedure for filing a suit for damage compensation was defined by section 46 of the Hunting Act. The starting point was to establish several courts of conciliation and the district court that would appoint a head court for the next three years. Whenever a law suit was filed, the “head umpire” called on both parties to selected within three days two confidants each and then scrutinized the case with them on the spot.

The purpose of the conciliation hearing was to find a just settlement. If the confidants failed to do so, the court made the decision regarding the payment. If the confidants couldn't agree on the compensation amount, the “umpire” set the compensation between the limits of the proposals from both parties. There was no appeal against the decision of the conciliation court.

Under section 41 all provisions of the Hunting Act were enforced by the gendarmerie, the district or municipal safety authorities and “sworn servants”, established to oversee the hunt.

Fines for infractions against the law were to be paid by:

- 1) persons who ignore the bans under sections 32, 33, 36 in the amount of 4 to 10 Koruna. If repeated, the fine could be increased up to 100 Koruna;
- 2) persons who misuse a hunting ticket by using someone else's or lending own ticket to another person for hunting
- 3) persons who hunt without a hunting ticket or certificate. The same holds for his guest;
- 4) persons who were caught walking in the hunting ground without the master of the hunting ground outside of public roads, vineyards and gardens with a firearm and other “hunting tools”. If the fine couldn't be collected from the offender, the person would be imprisoned, one day for each 10 Koruna. If the fine to be paid was less than 10 Koruna, the person would be imprisoned for at least 12 hours;
- 5) also any other actions and neglects that violate the provisions of sections 26 a) through g), unless these are punishable under the general Criminal Code and therefore a matter of courts.

Under section 43 fees are imposed by the political office and the fines collected go to the state treasury.

After Czechoslovakia was formed in 1918 the “Czechoslovak Hunting and Kynological Union” was founded in 1919 and in 1923 Czechoslovak Hunting Association. The “small” Hunting Act No. 98/1929 Col. was passed in 1929. This act further specified hunting and closed seasons. After the harmonization of agricultural and hunting interests the strategy shifted from cloven hoofed game to intense breeding of feathered game.

In 1941 (at the time in the Protectorate of Bohemia and Moravia) a governmental regulation on hunting No. 127/1941 was issued that, among other things, changed the acreage of new hunting grounds and introduced mandatory membership in the Czech Hunting Association.

Another legal document – Hunting Act No. 225/1947 Col. unified the hunting legislation for the entire Czechoslovakia and the following Hunting Act No. 23/1961 Col., which was

¹³ MUSIL, J. *Honební zákon pro Čechy*. Praha 1933, p. 166.

amended several times, separated hunting rights from land ownership and became the domain of state owned forest companies (Státní lesy, Státní statky) and agricultural cooperatives. These were lending hunting rights to hunting associations. The lower limit on hunting ground was 500 ha.

Currently, hunting rights are governed by the Hunting Act No. 449/2001 Coll., which has been amended several times.