



The Ban on Participation of Children and Teenagers in the Hunt in Poland – A Case Study of Parliamentary Law Enactment Process and its Consequences

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Abstract

We are witnessing a clash of (i) biocentric or ecocentric ideologies that grant equal rights to all living creatures, with (ii) an ideology that arose on the basis of anthropocentrism that gives the palm of priority to man. Hunters who are accused of killing defenseless animals for entertainment are at the heart of this dispute. Meanwhile, hunters argue that their activity results from the need to manage game populations, thus the necessity to limit the threats to human life and health and to minimize the extent of damage to field crops or forests. In the atmosphere of such public disputes between activists and hunters, decisions are made by politicians who shape specific legal solutions. In 2018, the Hunting Law (Polish Act of 13 October 1995, Journal of Laws of 2020.) in Poland was amended and children and adolescents under 18 were banned from participating in hunting. It has aroused dissatisfaction of hunters who have taken initiatives to amend these legal provisions, e.g. a complaint to the Constitutional Tribunal, a social draft amendment to the act. The legal initiatives of hunters have been fuelling a broad social debate that often have gone beyond the scope of sustainable hunting management. The amendment has been questioned by a group of Polish MPs as infringing the constitutional right of parents to bring up and educate their children in accordance with their worldviews. Moreover, the teenagers, frequently considered as adults under numerous provisions of Polish law, have been deprived of their constitutional freedom of making decisions about their pastimes. The opponents in turn claim that under the Constitution of the Republic of Poland (Polish Act of 21 August 1997, Journal of Laws of 2020.) children must be protected against violence and cruelty. The aim of the study is to present the mechanisms of a legal, political, sociological and ideological dispute and to provide some basic insight into the Parliamentary debate and the outcome of legislation process as a result of which children have been deprived of the right to accompany their parents during hunting expeditions also in the character of passive observers. The research methods applied included the following ones: the analysis of the discourses and legislation under scrutiny in

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Poland and a few selected countries, and empirical observation of debates carried out in public space. The research material encompassed the recorded Parliament speeches focusing on the issue in question, legislative process, social media posts and various blogs. The assessment of the current legal solutions and the analysis of the attitudes of both parties to the dispute leads to a reflection that the problem of prohibiting the participation of children under 18 in hunting is not solved. There is a need to search for new solutions on the basis of substantive knowledge, including, *inter alia*, legal science or social psychology. Politicians should be aware that the emotional pressure may not and should not be the basis for law amendments.

Keywords Hunting · Constitutional rights · Rights of parents · Rights of children · Hunting law · Legal semiotics

1 Introduction

The Animals' Rights Studies that emerged in the 19th century [27] together with first judgments punishing for cruelty to animals and vegetarian movements spreading worldwide initiated ever-growing discussions on the obligation of humans towards animals, especially sentient ones [30]. But in Antiquity some philosophers e.g. Plutarch criticized killing animals. The debate which has become especially heated since 70ties of the 20th century concerning the treatment of domesticated and wild animals is affecting legislation in various spheres of our lives more and more frequently [22]. In the initial part the authors will present two extremely opposing ideologies: the left-wing ideology fighting, among others for animal rights, biocentrism and right-wing ideology giving primacy to man and anthropocentrism. These ideologies in turn translate into the ideologies of political parties.

According to Matulewska and Gwiazdowicz [19], [20] we seem to be witnessing something important. What we increasingly observe in social media is the anthropomorphization of nature, personification of trees, humanization of animals and animization of men. Such a narrative becomes more and more emotional and some celebrities, politicians and journalists are involved in it. A fairy-tale image of nature, mutual love and harmony between different species of animals is created, the so-called Bambi Syndrom has developed [17], [5]. We want to transfer the love and specific rules of treating domestic animals to the natural environment, to wildlife. Meanwhile, nature is governed by its laws, devoid of cultural principles that shaped, for example, ethics or aesthetics. Hence, there is no good and evil in nature, just as there is no beauty or ugliness.

The social debate in Poland regarding the role of hunters is a part of this ideological dispute. Hunters justify the need to reduce certain species of animals by shooting for safety reasons, as some species pose threats to human life and health (e.g. increased road collisions, spread of infectious diseases such as rabies), as well as the enormous size of damage to field crops and forests [12]. In turn, the opponents of hunting see this activity as a degenerate unjustifiable form of entertainment, a play at the cost of animals' life, which is the basis for condemning hunters [25].

Both groups are highly dissatisfied. Hunters feel deprived of their constitutional right to bringing up their children in accordance with their worldviews. Anti-hunting groups complain that the pressure of pro-hunting lobbyists has led to the amendment of laws and they can no longer protest against hunting by blocking group hunts (article 42aa of the law on hunting [49]). What is obvious is the fact that each group protests against legal provisions that are unfavourable for their interests.

Under the influence of social pressure, Polish politicians have enacted a number of amendments that are unfavorable to hunters or that make them dissatisfied. Such an example is the amendment to the Hunting Law of 1 April 2018. Art. 42aa.(15) of this Act prohibits “hunting in the presence or with the participation of children up to 18 years of age” [13]. Moreover, pursuant to Art. 52.(7) of the Hunting Law, hunting in the presence or with the participation of a child up to the age of 18 is a misdemeanor, punishable by a fine, restriction of liberty or imprisonment for up to one year [13]. The hunters point out that that amendment is going to affect sustainable hunting management in the future. There is no denying the fact that if the children of hunters are not allowed to participate in hunts, the number of them becoming hunters as adults is going to be much lower than in the past years. It may lead to the situation in which the number of hunters in the Republic of Poland in a dozen years or so is going to decrease rapidly and as a consequence there will be not sufficient number of people to carry out sustainable hunting management tasks. Right now hunting in Poland is organised as voluntary activities, the costs of which are covered by hunters from their personal funds. At the same time if someone wants to exercise the right to hunt, he or she is obliged to fulfil duties imposed by the government. One of the duties involves the management of populations of animals inflicting damage to farm crops and forests and to pay out damages to farmers. Other duties involve keeping under surveillance the numbers of specific species in given habitats in order to ensure biodiversity, protect endangered species from extinction and limit conflicts between humans and wildlife. As all those activities are financed by hunters from their private funds (though they are tasks entrusted to them by the government authorities), they expect that legal regulations will be enacted to protect them and their families against co-terrorism, cyberbullying, cyber-aggression, hate speech, et cetera. They consider the government and authorities responsible for making it possible for them to fulfil those duties in an undisturbed manner. At the same time they want to prepare their children to take over the tasks in the future and for that purpose they are interested in being able to take teenagers with them to hunt.

The provision prohibiting children and adolescents from participating in hunting as passive observers has been very difficult to accept for hunters for whom the sphere of tradition passed down from generation to generation is extremely important. Motivated hunters therefore collected 100,000 signatures and presented in the Sejm (a lower chamber of the Polish Parliament) a social bill amending a law that was unfavorable for them. In their opinion, this provision is contrary to Art. 48.1 of the Constitution of the Republic of Poland [44], which reads: “Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.” [44]. Hunters consider themselves to be a social group that obeys all hunting laws [49], [50], [51], [57]. They therefore have the right,

as a social community, to protect their cultural values and to pass them on from generation to generation. They have invoked their rights and freedom of belief (Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 8–11, 14 [45]). Moreover, the hunters argue that the new provisions of the Hunting Law Act clearly differ from other provisions on minors. They claim that under certain circumstances, minors in Poland may take out a bank loan, are responsible for certain crimes as adults, may get married, and at the same time may not accompany their parents during hunts. They point to contradictions and limitations in the practical teaching of the profession. For example, in forestry vocational high schools, hunting management is a compulsory first grade course and at the same time students (14–15 years old) are not allowed to participate in hunts. However, there are no such restrictions in the vocational high schools, which educate such professionals such as butchers or charcuterie specialists [13].

The hunters' initiative concerning an apparently minor amendment in law caused a stormy political and social debate in Poland and aroused great emotions. The aim of the study is to present the mechanisms of a legal, political, sociological and ideological dispute and to provide some basic insight into the Parliamentary dispute and the outcome of legislation process as a result of which children and teenagers have been deprived of the right to accompany their parents during hunting expeditions also in the character of passive observers. The authors have juxtaposed some opinions of supporters and opponents of the prohibition under scrutiny to present the problem at hand.

2 Research Material and Methods

The research methods applied include: the semiotic analysis of the discourse of pro-hunting groups, including the empirical observation of debates carried out in public space. It should be stressed here that the analysis is understood here as the presentation of arguments together with their interpretation through the prism of legal, political, social, and behavioural patterns. The process of communication leading to the enactment of laws is always preceded by social debates. Therefore the law enactment is the process of communication of new legal provisions which are deeply rooted in social expectations of some groups of interest. Groups of interest may present their arguments in a variety of ways in a wide range of situations. The arguments may be presented verbally but also in a visual or audiovisual form. Both groups, that is to say supporters and opponents of the participation of teenagers in hunts, used such forms of communication in form of reports, short movies, pictures, interviews, parliamentary debates and so on. Therefore, the research material encompasses the recorded Parliament speeches focusing on the issue in question, legislative process, legal complaints, social media posts and various blogs.

In order to provide some more insight into the restrictive amendment the authors have presented the pertinent regulations in different countries. The research material included the following normative acts of the analyzed countries:

1. French Code de l'environnement [47];

2. German Bundesjagdgesetz 29.11.1952 (BGBl. I S. 2849), legal force as of November 14, 2018 (BGBl. I S. 1850) [48];
3. Polish:
 - (a) the Act of 13 October 1995, Hunting Law (Journal of Laws of 2020, item 1683, as amended) [49];
 - (b) the Act of 21 August 1997 on the protection of animals (Journal of Laws of 2020, item 638) [50];
 - (c) the Act of 22 March 2018, amending the Hunting Law (Journal of Laws of 2018, item 651, as amended) [51];
 - (d) the Act of 25 February 1964, Family and Guardianship Code (Journal of Laws of 2020, item 1359) [52];
 - (e) the Act of 26 June 1974, Labour Code (Journal of Laws of 2020, item 1320, as amended) [53];
 - (f) the Act of 30 November 2016, on the organization and procedure of proceedings before the Constitutional Tribunal (Journal of Laws of 2019, item 2393) [54];
 - (g) the Act of 6 June 1997, Penal Code (Journal of Laws of 2020, item 1444, as amended) [55];
 - (h) the Act of 6 November 2008, on the rights of the patient and the Patient's Rights Ombudsman (Journal of Laws of 2020, item 849, as amended) [56];
 - (i) the Ordinance of the Minister of Environment of 23 March 2005, on detailed conditions for hunting and marking carcasses (Journal of Laws of 2005, No. 61, item 548, as amended) [57];
 - (j) the Constitution of the Republic of Poland [44];
4. British:
 - (a) Firearms Act 1982 [42];
 - (b) Firearms Act 1986 [43];
5. Australian
 - (a) Firearms Regulation 2008 SL2008-55 made under the Firearms Act 1996 (Republication No 18, Effective: 21 December 2018, Republication date: 21 December 2018, Last amendment made by A2018-32) (Australian Capital Territory) [36];
 - (b) Weapons Regulations 2016 Current as at 1 July 2017 (Weapons Act 1990) (Queensland) [41];
 - (c) National Parks And Wildlife Act 1972 (South Australia) [39];
 - (d) National Parks and Wildlife (Hunting) Regulations 1996 (South Australia) [38];
 - (e) Schedule to REGULATIONS UNDER THE NATIONAL PARKS AND WILDLIFE ACT 1972, National Parks and Wildlife (Hunting) Regulations 1996 [40];

- (f) Firearms Act 1996 (Tasmania) An Act to provide for the regulation, registration and control of firearms [Royal Assent 30 August 1996] [36];
- (g) Firearms Act 1973 (Western Australia) An Act to make provision for the control and regulation of firearms and ammunition, the licensing of persons possessing, using, dealing with, or manufacturing firearms and ammunition, the repeal of the Firearms and Guns Act 1931 2, and for incidental and other purposes [35];

6 American:

- (a) General Laws, Part IV, Title I, Chap.269, Section 12B: Air rifles; possession by minors; shooting (Massachusetts) [34];
- (b) General Law, Part I, Title XX, Chap.140, Sect.1301/2: Lawfully furnishing weapons to minors for hunting, recreation, instruction and participation in shooting sports (Massachusetts) [33];
- (c) General Law, Part I, Title XIX, Chap.131, Sects.1,4: Hunter education programs; issuance of licenses to minors; target practice; confiscation of firearms (Massachusetts) [32].

3 The Genesis of the Legal Problem

3.1 The Course of the Legislative Process

On November 15, 2016, a draft amendment to the Act of October 13, 1995, Hunting Law was submitted by the Prime Minister to the Sejm of the 8th term of office.¹ The bill was passed to the Committee on Environment Protection, Natural Resources and Forestry and the Committee on Agriculture and Rural Development. The proposal to prohibit hunting in the presence or with the participation of children under the age of 16 appeared at the committee meeting on February 5, 2018. The amendment was not accepted [13].

At the session of the Sejm on December 2, 2016, the first reading of the draft amendment was held. The amendment was referred to the Environmental Protection, Natural Resources and Forestry Committee and the Agriculture and Rural Development Committee. The proposal to prohibit hunting in the presence or with the participation of children appeared during the committee meeting on February 5, 2018. The discussion in this regard began with a statement by MP Dorota Niedziela (PO): “As regards amendment 9 and art. 42aa, I have a whole series of amendments [...]”. In the next amendment, after point 15, we propose adding point 16 in the following wording: “(16) hunting in the presence or with the participation of children up to 16 years of age”.

¹ The course of the legislative process is available – with all mentioned documents – on the website of the Sejm of the 8th term of office [66].

The Minister of the Environment, Henryk Kowalczyk, stated regarding the ban on the participation of children in hunting that: “Here, of course, we violate the right of parents to raise their children freely. It is quite obvious. Maybe we would not bring up other people’s children, I would suggest. So it is also a negative opinion on this amendment.”

The amendments of MP Dorota Niedziela (PO) were not adopted.

There was more discussion on the ban during the committee meeting on February 28, 2018. Two sets of amendments were tabled in this regard: the first concerned the ban on hunting in the presence or with the participation of children under the age of 16 (tabled by the Civic Platform (PO) Party – amendments No. 20 and 47), while the second moved the age limit to 18 (tabled by the Law and Justice (PiS) Party – amendments No. 21 and 48). The Commission rejected all amendments that is to say amendments Nos. 20, 21 47 and 48.

The opponents of the presence or participation of children or teenagers in hunts claim that such activity causes trauma, is damaging for the psyche and leads to the upbringing of psychopaths or emotionally damaged adults, frequently deprived of empathy and mistreating human and non-human animals. The proponents of the presence or participation of children or teenagers in hunts claim, in turn, that the ban is depriving parents of the constitutional right to bring their children up in accordance with their worldviews and that the parents should have the right to decide whether their children are psychologically mature enough to participate in various types of activities. Participation in martial arts or boxing classes also exposes children and teenagers to violence and no one wants to limit the civic freedoms in that respect. As the opinion of opponents of the participation of children and teenagers turned out to be more convincing, more space will be devoted to the ban opposition stance.

At the session of the Sejm on March 6, 2018, the third reading was held and the law was passed. Amendments No. 21 and 48 were adopted by the Sejm. At session on March 15, 2018, the Senate introduced amendments to the bill, with the exception of the ban on hunting in the presence or with the participation of children under the age of 18. The Committee on the Environment, Natural Resources and Forestry and the Committee on Agriculture and Rural Development urged the Sejm to adopt Senate’s amendments. At session on March 22, 2018, the Sejm adopted the amendments of the Senate in their entirety. The Act of March 22, 2018, amending the Hunting Law, was sent to the President of the Republic of Poland for signature on March 23, 2018. The President signed the amended law on March 28, 2018. The amended law was promulgated on March 30, 2018, and came into force on April 1, 2018.

3.2 Proceedings before the Constitutional Tribunal

A group of Sejm Deputies of the Sejm of the 8th term of office (hereinafter: the applicant), by application of 21 May 2018 (case ref. K 4/18), requested the Constitutional Tribunal to examine the conformity of ban on hunting in the presence or with the

participation of children under the age of 18 with certain provisions of the Constitution of the Republic of Poland [44]², that is to say [78]:

“Article 48 1. Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions. 2. Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.” [44], [cf. 78]

“Article 72.3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.” [44], [cf. 78]

“Article 31.3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.” [44], [cf. 78]

“Article 32.1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.” [44], [cf. 78]

“Article 47 Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.”³ [44], [cf. 78]

The group of applicants pointed out that:

“[...] the legal solutions introduced [...] into the Hunting Law limit the right of hunters to raise their own children, and therefore this provision is incompatible with Article 48(1) of the Constitution [...]. Hunting Law states directly that “*it is forbidden to hunt in the presence or with the participation of children under 18 years of age*”. Thus, the freedom of raising a child in accordance with his/her convictions, which in this case are the high value parents ascribe to the tradition of hunting, was destroyed. Under the legislation introduced, they will not be able to pass on this tradition to their children and raise them in accordance with their understanding of ecology and the welfare of animals and the entire forest ecosystem.” [78].

² The course of the proceeding before the Constitutional Tribunal is available – with the documents cited below – on the website of the Constitutional Tribunal [68].

³ According to the English translation of the Constitution available on the website of the Constitutional Tribunal [69].

The MPs further pointed out that the challenged legal provision, “in so far as it limits the right of parents to bring up their children” [78], is incompatible with Article 18(1) of the Convention on the Rights of the Child [46], for:

“it is clear from that article that parents have the primary responsibility for their child’s upbringing and development. They shall have the right to bring their children up in accordance with their convictions and views, and their leisure activities provided they do not violate the rights of their children. Therefore, if their offspring want to participate in hunting together with their parents, the law should not prohibit them from doing so. Parents, of course, bear responsibility for the proper upbringing of their children, and therefore may also be responsible for any damage that may be caused to their children by their participation in the hunt, but it is undoubtedly incompatible with both Article 48(1) of the Constitution and Article 18(1) of the Convention on the Rights of the Child to arbitrarily prohibit parents from taking their children hunting and teaching them about a centuries-old tradition inscribed in the intangible heritage of UNESCO.” [78].

The group of MPs added that:

“hunting according to the statutory definition (Article 4 of the Hunting Law) is not only shooting, but also tracking, catching by permitted means of live game and catching game with the help of game birds with the permission of the minister in charge of the environment. Introduction of penal provisions to the Hunting Law regarding hunting in the presence of children under 18 years of age – threatened with a fine, restriction of liberty or imprisonment of up to one year, may result in preventing hunters from hunting. Introduction of this type of solution will result in criminal consequences for a hunter who encounters a person under the age of 18 in the forest or in the field, even if that person does not take part in the hunt at all.” [78].

The applicants also referred to the rights of children including the Constitutional freedoms that should be accounted for and should not be infringed [78]. Thus, MPs in their application claimed that:

“the freedom of children will be [...] significantly restricted by prohibiting their participation, or even mere presence – as passive observers – in hunts. Until now, children have been able to participate and have exercised their freedom to decide about their lives, their privacy and to spend their time as they wish. [...] The ban on participation in hunting activities significantly restricts these freedoms, and is additionally inconsistent with Article 31(3) of the Constitution, which is violated, as is the case with parents’ right to raise their children in accordance with their beliefs. This is because the proportionality test resulting from the above article is not met, as this regulation is not necessary in a democratic state either for its security or public order, or for the protection of the environment, health and public morals, or the freedoms and rights of others,

and in addition, these restrictions violate the essence of the right to freedom and the right to decide about one's personal life, of every citizen, including a child under the age of 18." [78].

The applicants also made a systemic analysis of legal provisions in respect to rights and freedoms of children in Poland. They pointed out that there are numerous examples of norms allowing minors "to perform activities and actions that are far more momentous to their health, life and property than participation or presence in hunting" [78]. First of all under the Polish Labour Code minors who are 16 years old may work in various places such as slaughterhouses or in butchers' shops (Articles 190 and 191 §1) [78], [53]. It actually means that they have contact with the procedure of killing animals and processing their body parts for consumption [78]. Secondly the Polish Penal Code [55] regulates the age of sexual consent in Article 200 under which persons over 15 may engage in sexual relations at their will. Thirdly, the Polish Act of November 6, 2008, on the rights of the patient and the Patient's Rights Ombudsman [56] enables a patient who has turned 16 years of age to make decisions concerning medical treatment, including high risk ones as the law considers such a patient mature enough both emotionally and intellectually to decide about his or her health and fate [78]. Next, under the provisions of the Polish Family and Guardianship Code [52] a girl who is 16 years old may marry and at the moment of marriage is treated as a person who has attained the age of majority [cf. 78]. Consequently, the applicant pointed out that introduced ban infringes the Constitutional rights by discriminating against persons who have not attained the age of majority as under the 'rational legislator' principle, the legislature cannot in another statute declare that 16 is too young to participate in, or even passively attend, hunts if such a person is allowed to decide about himself or herself in other spheres of life [78]. What is more,

"neither the Sejm, the Senate, nor the Children's Rights Ombudsman secured the rights of children wishing to participate in hunting, did not conduct any consultations with children and their parents, and arbitrarily decided that their rights would be restricted (...) and Article 16 of the Convention on the Rights of the Child, as it arbitrarily interferes in the sphere of children's private life. Every child has freedom in matters of private life, including his or her hobbies and leisure activities." [78].

By order of January 21, 2020, ref. K 4/18 [65], the Constitutional Tribunal discontinued the proceedings on the basis of the Polish Act on the organization and procedure of proceedings before the Constitutional Tribunal [54], due to discontinuance of parliamentary work (in the event of the end of the term of office of the Sejm and Senate, in unfinished matters initiated on the basis of a motion of a group of deputies or a group of senators referred to in Article 191 paragraph 1 point 1 of the Constitution of the Republic of Poland [44], the Tribunal issues a decision on discontinuance of the proceedings at a closed session). Thus, the substantive examination of the motion by the Constitutional Tribunal did not take place, the grounds for discontinuance being exclusively procedural issues related to the expiry of the applicant's term of office.

3.3 Citizens' Bill

On October 31, 2019, the Polish Parliament received a draft bill originating from the citizens which provided for a new wording of the prohibition (“carrying out hunting in the presence or with the participation of children under the age of 18 without the consent of the parents or legal guardians”).⁴

The explanatory memorandum to the bill states that its purpose is to give parents or legal guardians of children under 18 the opportunity to hunt with them or in their presence, allowing them to develop their children’s interests, spend their free time, exercise their parental authority or custody, and promote their passion for hunting. Hunting is legal and strictly defined by Polish law, and it is justified by need for reduction in the number of game animals, among other things in order to limit the damage they cause. It is an active nature conservation and a necessary condition for maintaining biodiversity. Moreover, it develops young people – their knowledge, their ability to make conscious choices, their physical form. It is the parents or legal guardians, for whom the best interests of the child are paramount, who should be concerned with assessing “the child’s level of emotional development and the threshold of his or her mental toughness”. Therefore, maintaining the ban on hunting with or in the presence of children under the age of 18 and criminalizing it is unacceptable.

On December 4, 2019, the civic bill was referred for the first reading at the session of the Polish Parliament. The Supreme Court did not comment on the citizen’s bill in a letter dated December 30, 2019.

The Bureau of Parliamentary Analyses, in its opinion of December 17, 2019, expressed the view that the existing norm can be considered as a limitation “of the choice of means of parental educational influence, however, constitutes a constitutionally legitimate limitation”.

In his letter of February 25, 2020, the Prosecutor General stated that in his opinion “the proposal of normative changes covered by the draft does not deserve acceptance”. The Council of Ministers has not provided a position.

During the session of the Sejm on April 16, 2020, the first reading of the civic bill was held, which was referred to the Committee on Environmental Protection, Natural Resources and Forestry.

The Committee on Environment, Natural Resources and Forestry considered the citizens’ bill during its meeting on July 22, 2020. The bill was not passed.

4 Constitutional Law Analysis

The following analysis covers two groups of issues:

1. limitation of parents’ rights to bring up children in accordance with their own convictions (Article 48 (1) of the Constitution of the Republic of Poland [44]).

⁴ The course of the legislative process is available – with all mentioned documents – on the website of the Sejm of the 9th term of office [67].

2. limitations of children's rights to decide about their personal life (Article 47 of the Constitution of the Republic of Poland [44]).

The essence of the constitutional problem allows to verify whether these limitations may be justified by the protection of children's rights, including protecting them against violence (Article 72 paragraph 1 of the Constitution of the Republic of Poland [44]). The assessment of constitutionality would have to take into account the proportionality of the limitations (Article 31, paragraph 3 of the Constitution of the Republic of Poland [44]) together with the question of a possible violation of the principle of equality (Article 32 of the Constitution of the Republic of Poland [44]).

4.1 Constitutional Protection of the best Interests of the Child

Although the concept of 'the good of the child' does not appear in the Constitution of the Republic of Poland [44], it is a constitutional value that complements the broader value of 'the good of the family' (cf. [2 p. 132 in 3]; [8 [in 9)]. As indicated by the Constitutional Tribunal (Judgment of April 28, 2003, ref. K 18/02 [58])⁵:

"rights of the child constitute a kind of constitutional general clause, the reconstruction of which should take place through reference to the constitutional axiology and general systemic assumptions (...) The notion of 'rights of the child' in the provisions of the Constitution should be understood as an order to ensure protection of the interests of the minor, who in practice may assert it himself to a very limited extent".

Importantly, as commentators [8 in 9] point out:

"The constitutional position of the 'child' includes, on the one hand - a passive status, determining the principles and scope of the child's subjection to the authority of other persons, primarily parents and guardians, as well as to the care and protection of public authorities, and on the other hand - an active status, providing the child with the possibility of independently exercising certain constitutional freedoms and rights".

The prohibition of hunting in the presence or with the participation of children under 18 years of age is justified by reference to article 72 paragraph 1 of the Constitution of the Republic of Poland [44], according to which "The Republic of Poland shall ensure the protection of the rights of the child. Everyone has the right to demand from public authorities the protection of children from violence, cruelty, exploitation and demoralization".

As one of the scholars [7 in 31] points out:

"[t]he obligation to protect the rights of the child (...) is not the source of any subjective right, hence the first sentence of Article 72(1) cannot be a model in proceedings initiated by a constitutional complaint (...). A subjective right

⁵ Cf. Judgments of the Constitutional Tribunal of: April 17, 2007, ref. SK 20/05 [59]; October 11, 2011, ref. K 16/10 [61]; November 26, 2013, ref. P 33/12 [62]; January 21, 2014, ref. SK 5/12 [65]; June 29, 2016, ref. SK 24/15 [64].

results instead from the second sentence of Article 72 (1), which constitutes the right of everyone (*actio popularis*) to demand that the public authorities protect the child against violence, cruelty, exploitation and demoralization”.

The ban is intended to protect children from the ‘violence’ and ‘cruelty’ associated with hunting. It is the acts of violence against game, which result in killing the game, that are supposed to harm the welfare of the child.

As the doctrine Borysiak [4 in 26] points out:

“[t]he concepts of violence, cruelty, exploitation and demoralization are to be understood in a colloquial and foundational way. They seem to have an autonomous meaning, even if the concept of violence appears in some ordinary laws (...) Violence will usually consist in violating the rights of the child - especially his or her dignity - by beating, using corporal punishment or drastic forms of sexual abuse. The welfare of the child is particularly taken into account in the provisions of the [Criminal Code] by penalizing such acts as abuse (Art. 207 [Criminal Code]) or abduction or detention of a minor (Art. 211 [Criminal Code]). (...) The phenomenon of violence may also appear in family relations. The protection of children’s rights in this sphere means protecting them from domestic violence and crimes against the family. (...) The notion of cruelty is not defined either in the Polish Constitution or in ordinary legislation. It should be understood in a manner similar to violence (...), but cruelty will usually be directed at the psychological rather than physical sphere of the child. Examples of cruelty which does not constitute physical violence may be, for example, humiliation or drastic ridicule”.

Whilst the protection of the child against violence and cruelty should be primarily related to situations where the child is directly subjected to them (involving physical and mental suffering), the legal system should also protect the child when acts of violence and cruelty indirectly affect them (for example, when the child witnesses a crime – involving mental suffering).

What is important in this respect, however, is that the protection of the child against such indirect acts of violence or cruelty, taking into account the question of the ‘good of the child’, should concern only such situations which pose a threat to this good (or rather to the child’s psyche). This means that not every – broadly defined – act of violence and cruelty witnessed by a child should be considered within the framework of Article 72(1) of the Constitution of the Republic of Poland [44].

Firstly, in the case of hunting, the object of acts of violence (actually killing) is game. It seems that these acts go beyond their understanding on the grounds of the Constitution of the Republic of Poland [44], which in Article 72 paragraph 1 refers to the situation when their object is a human being.

Secondly, the legal system allows hunting, while at the same time extensively regulating it, including the treatment and killing of game.

In the legal system, the prohibition of killing animals and the prohibition of animal abuse, established by Article 6 of the Polish Act of August 21, 1997, on the protection of animals [50], are in force. An exception to the prohibition on killing animals

is, *inter alia*, the carrying out of hunting, and, according to Article 33(1a) of that act, “[t]he killing of animals may only be carried out in a humane manner involving the infliction of a minimum of physical and mental suffering.”

In addition, the regulation of the Minister of the Environment specifies the way of killing game (with the use of specific firearms, hunting bird), and also introduces the prohibition to use during the hunt “blinded or mutilated animals used as decoys” (§6 paragraph 2 point 1 Polish Ordinance of the Minister of Environment of March 23, 2005, on detailed conditions for hunting and marking carcasses).

If the hunting is performed fully legally (it is not a crime, it is not poaching, for example), then one cannot speak of cruelty or potential demoralization.

As regards the risks to the psychological well-being of the child, it seems that the prohibition of hunting in the presence or with the participation of children under the age of 18 could be justified if there is a regular pattern of negative effects on their psychology. However, this is an individual aspect which requires a separate assessment.

In this regard, however, two important issues would need to be addressed: (1) the voluntariness of the child’s participation in the hunt; (2) the age limit for the child’s decision.

If the child consents to the hunting being carried out in his or her presence or with his or her participation, the risk of psychological welfare risks from witnessing the killing of animals (which does not always happen during hunting), or the swatting, seems negligible.

The problem, however, may be to determine the age limit when a child will be able to consciously make such a decision. Here, a systematic reference may be useful, as was done by the applicant in the case ref. K 4/18.

The situation may be different when a child is present or participates in hunting against his/her will. Avoiding such activity may then be dictated by the negative impact of hunting on the child’s psyche (e.g. traumatic experiences of several-year-old children forced to participate in the ‘tradition of hunting’, which are the basis of scientific studies cited by proponents of the ban).

Risk to the child’s physical well-being: The issue of the danger that hunting poses to the child’s goods such as life and health (bodily integrity) is also raised. According to the proponents of the ban, children cannot exercise due care and thus the risk of them becoming victims of a hunting mishap is significant. This argumentation seems to be only partly justified, because it completely ignores the issue of differentiation of children due to their age, and thus their degree of emotional and intellectual maturity, which is reflected in the observance of precautionary rules. In this respect, systemic references, indicated by the applicant in the case ref. K 4/18, may be useful, particularly Article 65 Sect.3 of the Constitution of the Republic of Poland [44].

It should be remembered that the legal system defines in detail the rules of hunting, so as to minimize the risk of accidents (cf. Polish Ordinance of the Minister of Environment of March 23, 2005, on detailed conditions for hunting and marking carcasses).

4.2 Patterns of Control - the Rights of Parents and Children

4.2.1 The Right of Parents to Bring Up their Children

According to Article 48 (1) of the Constitution of the Republic of Poland,

“[t]he parents shall have the right to bring up their children in accordance with their own convictions. This upbringing shall take into account the degree of maturity of the child, as well as the child’s freedom of conscience and religion and his convictions.” [44].

As pointed out by the Polish Constitutional Tribunal – referring to the views of P. Sarnecki (Judgement of June 23, 2008, ref. P 18/06 [60]):

“[upbringing as a constitutional notion is included in Article 48 and Article 53 par. 3 of the Constitution, which formulates the right of parents to bring up children in accordance with their own convictions, in particular religious ones. It is clear from these provisions that the Constitution regulates only one, the ‘worldview’ aspect of upbringing, links the concept of upbringing with parental authority and gives priority to the choice of methods and direction of upbringing to the parents. Upbringing within the meaning of these articles “means inculcating and strengthening in children a particular worldview, convictions, system of values, moral and ethical principles - by conscious activity of parents”. - or - on the grounds of Article 53 par. 3 of the Constitution - institutions chosen by them, e.g. schools or religious associations. It does not include upbringing as care for the proper physical and intellectual development (education), which is connected with the care for the material conditions of the child’s existence – parents’ obligations in this scope are anchored in other provisions of the Constitution: Articles 70–72, Article 18 and to some extent also Article 68 par.3, Article 70, Article 71 and Article 69”.

Moreover, the *ratio legis* of Article 48 of the Constitution of the Republic of Poland [44] is “to guarantee parents constitutional protection of their rights against arbitrary and arbitrary interference of the state” [7 in 31]; see Judgments of the Constitutional Tribunal of: April 28, 2003, ref. K 18/02 [58]; January 21, 2014, ref. SK 5/12 [63].

The doctrine [28 in 9] points out that:

[t]he principle of prioritizing the welfare of the child - as a human person whose dignity (Article 30) manifests itself in a very special way, and the ‘duty of solidarity’ with children (see introduction) as heralds of ‘future generations’ (ibid.) requires a particular commitment in the State, which is after all ‘the common good of all citizens’. (Article 1).

Commentators such as Borysiak [4 in 26] point out that:

The concept of upbringing, although it appears in ordinary legislation, above all in the Family and Guardianship Code (see Article 95 §1 or Article 1121 §1(1)), is also not defined in these provisions. In order to decode it, we should refer to its understanding in general language. The notion of upbringing means “all activities aiming at physical, moral and mental shaping of a human being and preparing him/her for life in society”. Thus it can be defined as a conscious transfer by parents to their children of a certain view.

4.2.2 Children’s Right to Privacy

According to Article 47 of the Constitution of the Republic of Poland, “everyone has the right to the legal protection of his private life, family life, honour and good name and to decide on his personal life.” [44].

In the doctrine it is pointed out that this provision expresses two subjective rights:

- a. the right of an individual to legal protection of private life, family life, honour and good name;
- b. the right of an individual to decide about his/her personal life (cf. [7 in 31]).

In this respect, it is possible to identify both rights in the context of the prohibition under review.

The lack of opportunity to participate in hunting may interfere in the sphere of family life, because children are deprived of the possibility to spend time with their families - not only parents, but also grandparents or siblings.

Participation in hunting is also about making decisions concerning one’s personal life, and the opportunity to gain experience at a young age which should be linked to a fuller realization of human rights in adult life.

4.3 Failure to Observe the 14-day *Vacatio Legis* Requirement

From the principle of a democratic state of law (Article 2 of the Constitution of the Republic of Poland [44]), the Constitutional Tribunal in its rulings to date has derived a number of requirements relating to the lawmaking process. One of them is the requirement of an appropriate period of *vacatio legis*. The analysis of the legislative process allows the assumption that the period of rest of the law was only one day, which in view of the criminal law nature of the established norms may raise significant constitutional doubts.

4.4 Opinions of Opponents of Participation of Minors in Hunts and Legislative Inconsistency

While hunters often based their arguments on legal grounds, e.g. the constitutional right of a parent to raise their children in accordance with their worldview, their adversaries did not refer to the legal aspect, but focused on searching for arguments

in the field of child psychology. Jurszo [15] cited a number of reasons why children should not be allowed to participate in hunting, quoting, for example, opinions of:

1. Wojciech Eichelberger, a psychologist who believes that such action “hurts and deforms their natural sensitivity and ability to compassion and empathy, and respect for the natural world”;
2. the Committee of Pedagogical Sciences of the Polish Academy of Sciences from 2015: “We cannot agree with the fact that children and adolescents take part in individual and collective hunts, which are toxic for the socialization of young generations, during which they participate in hunts, tracking, chasing injured animals, or killing them.”;
3. scholars from the University of Silesia: “Psychologists and therapists emphasize the disastrous impact of hunting on the psyche of children, their unpreparedness to deal with highly traumatic experiences, which include taking part in taking the life of animals”.

However, as shown by scientific research, and not selected opinions, the problem is extremely complex, as is the child’s psyche or the environment in which the child is brought up (large city / rural farm). Just like almost any human activity, hunting can serve both to demoralize and to shape the right attitudes. Carter [6] takes a position that is exactly the opposite of the ones presented above, pointing out that hunting together with children serves (1) deepening the child-parent relationship by spending time together, (2) cultivating traditions, including family traditions, (3) protecting the environment and deepening natural science, (4) shaping interests, (5) teaching how to spend time in nature, (6) promoting health and physical fitness, (7) gaining the necessary life skills “from discipline, to patience, to endurance, to learning to deal with disappointment, hunting helps develop skills in your children that will turn them into well-rounded adults”, (8) shaping a sense of responsibility, (9) teaching self-confidence, and (10) mastering the principles of safe weapon use. In turn, from an article by Gray [11] published on the psychologytoday website, we learn that hunting is extremely useful in extending the knowledge and skills of children in various spheres of life.

At the same time the public opinion was exposed to movies and pictures of children traumatized by the sight of carcasses of killed animals. There is no denying the fact, that not all children and teenagers should be exposed to such sight and forcing children to participate in hunts against their will is unacceptable.

The opponents of the participation of children in hunts also raise the argument that children are not allowed to participate in killing vertebrate animals in slaughter houses under Article 34.4 of the Polish Act of 21 August 1997 on the protection of animals [50]. What is more it is highlighted that the right of parents to bring up their children in accordance with their own convictions (Article 48 of the Polish Constitution of 1997 [44]) can be exercised only when other provision of the Polish Constitution of 1997 [44] are observed. Thus, they mention Article 72(1) of the Polish Constitution of 1997 [44] introducing the protection of children against violence, demoralization and cruelty. The prohibition is interpreted as the need to protect

children from any form of violence and cruelty which is commonly associated with hunting, rather than protecting children against cruelty towards them.

It can therefore be concluded that the different opinions of many specialists confirm the thesis about the complexity of the topic under consideration. Therefore, it seems necessary to carry out further research not only in the field of child psychology, but also sociological research covering the issue of raising children depending on the natural knowledge or the parents' worldview.

The complexity of this subject, depending on the world view and political faction, is well illustrated by the parliamentary debate of 15 April 2020. It was then that the draft amendments to the Hunting Law act presented by hunters were considered in the first reading.

You could hear the deputies from the left side of the political scene, and the opinion was expressed, for example, by MP Klaudia Jachira: "Hunters kill because they like it, because they get sick satisfaction from it, and this is what those sadists want to teach to their own children?" [74]. As a result, the MP was sued by the Institute of Environmental Analyzes for calling hunters sadists [75].

In turn, the representative of the right side of the political scene, MP Dobromir Sośnierz, expressed the opinion that:

"It's unbelievable what we're hearing here today from the left side. The left assumes that a sixteen-year-old girl can kill her own child, but cannot go hunting with her father and kill a rabbit, or even watch a rabbit be killed. The Left assumes that a child is harmed by watching a hunt, and that a child is not harmed by an abortion. Parents can give their child to death, with impunity according to the left, but they cannot show the child the hunt because it will result in a year in prison." [76].

The above examples show that the debate was mostly ideological, going far beyond purely hunting matters. It did not present many substantive arguments supported by scientific data, but it was dominated by strong emotions. Nevertheless, one cannot escape the conclusion that legal provisions of some legal acts in Poland are not consistent and allow for a multitude of interpretations. The argument that the Act on protection of animals [50] does not allow children to participate in killing vertebrates. Students of forestry vocational high schools are not allowed to participate in hunts [49]. Simultaneously, students of the same-level vocational high schools which educate such professionals such as butchers or charcuterie specialists [13] may serve internships in slaughterhouses. There are no definitions of terms such as "cruelty" and "violence". There is also no research into the psychological profile of hunters in Poland.

5 Legal Provisions on Children and Hunts in Selected Countries⁶

Basically, when discussing the issue of the participation of children in hunting, it should be considered on four levels:

- (i) the right to participate in the hunt as a passive participant, not having the right to use any weapon (e.g. an observer or a beater);
- (ii) the right to participate in hunting with weapons under the care and supervision of an adult; and.
- (iii) the right to participate in a gun hunt without adult supervision.

5.1 Australia

Australian law varies from territory to territory regarding the right to hunt and access weapons. Although there are voices against hunting in Australia, in areas where the human economy is threatened by animal activities that cause severe damage, hunting is an element of sustainable ecology, aimed at maintaining balance and reducing human-wild animal conflicts [21].

In the Australian Capital Territory, 12–18 year olds may apply for a minor's fire-arm permit under the Firearms Regulation 2008 [36]. With this permit, you can hunt pests such as rabbits, hares, foxes, feral cats and dogs.

In Queensland, hunting may be performed on one's own from the age of 18, but from the age of 11, hunting is allowed under adult supervision. Access to firearms is regulated by the Weapons Regulations 2016 [41].

In South Australia, there are three types of licenses that can be applied for depending on age. The first, the fullest, is reserved for adults who have reached the age of 18 (hunting permit). Adolescents between the ages of 15 and 17 may apply for a junior hunting permit to practice hunting, and persons aged 14 or less may apply for a sub-junior hunting permit. These issues are regulated by the National Parks And Wildlife Act 1972 [39] and the National Parks and Wildlife (Hunting) Regulations 1996 [39], cf. also [40].

In Tasmania, it is allowed to issue hunting licenses to persons under 18 years of age. Persons between the ages of 16 and 18 may apply for a hunting license. People between the ages of 12 and 16 can apply for a firearms license without the right to hunt with them. Usually it is a license for a firearm used in target shooting. The right of access to firearms is governed by the Firearms Act 1996 (Tasmania) [36].

In Western Australia, only persons 18 years of age or older can apply for a firearms license and the right to hunt. At the same time, a minor under the supervision of an adult holding a firearms license may use certain types of firearms without a license under the Firearms Act 1973 (Western Australia) [35] cf. [77].

⁶ Part 6 of the paper is translation and summary of the research published by one of the authors [anonymized] in the Polish language and not available online. The appropriate copyrights permission has been obtained from the publisher

5.2 France

French legislation provides for two types of hunting license, namely a full license open to adults who meet the legal requirements, including the right to perform hunting and the so-called hunting with an accompanying person (*Chasse accompagnée*) available to persons over 15 years of age and accompanied by an adult who has the right to hunt for at least 5 years. A minor must have completed the course before obtaining the license to practice hunting and may commence the course at the age of 14.5 years. In the case of hunting by a minor hunter under adult supervision, only one weapon may be taken into the field. From the age of 18 you can hunt without adult supervision. There is no age limit for participation in the hunt as an observer [47].

5.3 Germany

In order to be able to hunt in Germany, it is necessary to (i) pass the hunting exam, which covers the material carried out during the course (examination of the use of weapons and hunting knowledge), (ii) purchase of civil liability insurance for hunters, (iii) be a trustworthy person, not punished. Basically, persons over 18 years of age can take the exam and obtain hunting license. The law, however, provides for the Young Hunter's License, which may be applied for by persons over 16 years of age (cf. [48]). The license entitles you to exercise the right to hunt [72]. The law does not prohibit children from participating in the hunt as observers. [72].

5.4 United Kingdom

In England and Wales alone, more than 3,500 people under the age of 18 have firearms of the 3,541 people under the age of 18, according to the documents issued by March 31, 2017, 327 were 13 years or less, 3,214 were between the ages of 14 and 17. Surprisingly, even children as young as seven applied for and received a firearms license. Basically, there is no legal minimum age for access to a firearm. However, persons under the age of fifteen are not permitted to use the firearms without adult supervision. It should be emphasized here that in the light of Anglo-Saxon law, an adult is considered a person who has reached the age of 21. The right to use a firearm does not equate to the right to purchase firearms and ammunition. There are further restrictions in this regard, as this right is acquired upon reaching the age of 18. There is also variation in the type of firearm. The youngest can only use smoothbore weapons. You must be at least 14 years old to use a rifled barrel (cf. [42], [43]).

Despite the change in the approach to hunting in Great Britain, in particular in England and Wales, where, for example, the traditionally practiced fox hunting with hounds was banned, it is believed that the contact with weapons from an early age teaches manners and translates into the habits of weapon users [14], [21], which in general increases security in this regard.

“Peter Glenser, chairman of the British Association for Shooting and Conservation, said: ‘Teaching the responsible and safe use of firearms to younger people removes the myths that surround firearms, and teaches both self control and

responsibility towards others. [...] Shooting has many aspects – from pest control through to Olympic and Commonwealth Games clay shooting – and it is vital that anyone wanting to compete at these top levels gets an early start in life.” [71].

In order to obtain a license to use a weapon, a fairly rigorous procedure has to be followed, involving environmental interviews conducted by the police.

“The UK is seen as having some of the toughest gun control laws in the world. Applications are examined and then granted or refused by local police forces after a number of checks including interviews, visits and references. Certificates can be revoked if a chief officer is satisfied that the holder can no longer be entrusted with firearms or shotguns. [...] In particular, there are very strict controls on young certificate holders, including around their tight supervision. The Policing and Crime Act 2017 strengthens firearms legislation by closing loopholes in the law that have been exploited by criminals” [71].

A license to use a firearm may be terminated when an offense or crime is committed. [71], [21].

5.5 USA

Basically, one should be aware of the fact that the United States is an extremely diverse country in legal terms. All 50 states have state law, and access to firearms and the exercise of hunting are governed by it. The situation is also changing rapidly. Figure 1 shows the legal status as of February 2016 regarding the possibility of independent exercise of the right to hunt without adult supervision. As you can see in this figure, in 7 states, children of any age are allowed to hunt. These states include Washington, Wyoming, New Mexico, Arizona, Alabama, Kentucky, and Indiana. In 11 states, i.e. Idaho, South Dakota, Nebraska, Oklahoma, Texas, Louisiana, Mississippi, Georgia, Missouri, Pennsylvania and Virginia, children from 9 to 12 years of age can hunt unsupervised (Fig. 1). Also in 11 states, children from 11 to 15 years of age can hunt unsupervised.

A detailed list of the age limit for hunting without adult supervision is presented in the table 1 below.

For example, the state of Texas has the following age requirements. A hunting license can be obtained from the age of 9 at the earliest. It entitles you to perform hunting yourself. For children under the age of 9, an accompanying person who is at least 17 years old, who is eligible to hunt in Texas, has received hunting training or is exempt from such a course under separate regulations (e.g. as a military man) is required. Both the child and the accompanying hunter must be within the range of a normal tone of voice at all times. People from 9 to 16 years of age must have completed a hunting course or perform hunting in the presence of an accompanying person who meets the requirements described above. Persons aged 17 and over must complete a hunting course or purchase the so-called consent to postpone the hunting course (Hunter Education Deferral). In the latter case, they must be accompanied by

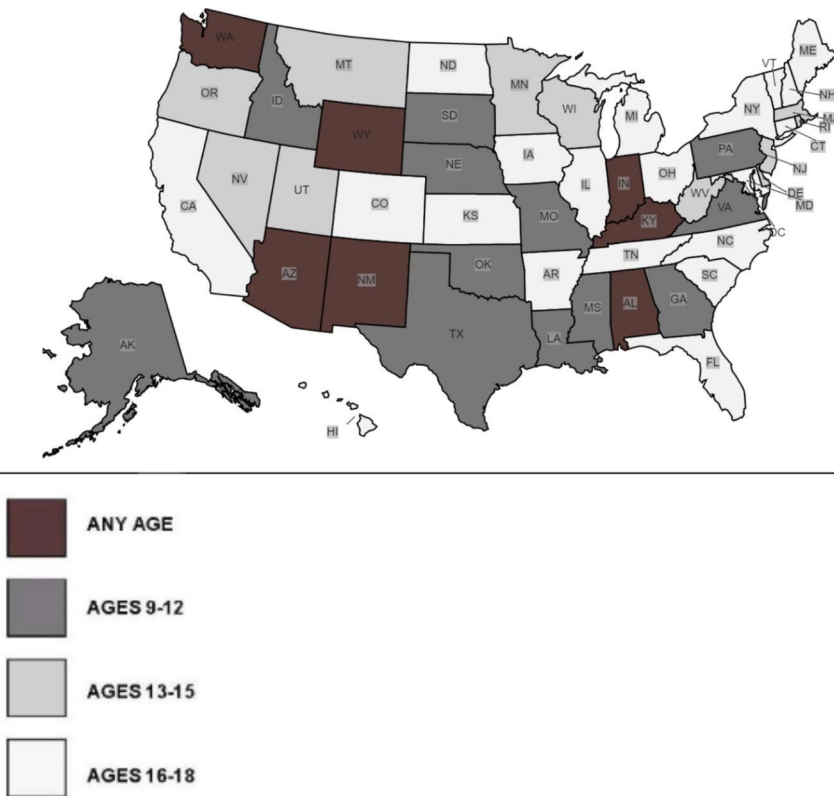


Fig. 1 Possibility of independent hunting by minors, depending on their age [1]

a hunter while hunting, and hunting is carried out on the basis of hunting with a child [70].

In Massachusetts, adolescents between the ages of 12 and 17 may exercise the right to hunt. You cannot hunt under the age of 12. Minors aged 12–14 years old may hunt when accompanied by an adult with appropriate permissions. Adults and minors can hunt with one firearm or one bow. A licensed adult may supervise only one minor at a time. An adult must have a valid Massachusetts Hunting or Sporting License, any required state or federal fees paid, and a firearms license if a firearm is used. Firearms licenses are issued by the local police department. A minor does not have to meet any of the above conditions [32], [33], [34].

Minors aged 15–17 must be licensed, have to pay the appropriate fees and have a permit to hunt the selected bird or mammal. Minors aged 15–17 must be accompanied by an adult, unless they have a government-issued Basic Hunter Education certificate. Minors hunting without adult supervision must have this certificate with them while hunting. If a minor (15–17 years old) hunts with firearms, they must comply with Massachusetts Firearms Licensing Law and a Firearms Identification Card (FID). Firearms licenses are issued by the local police department. To purchase a hunting license in Massachusetts, minors or non-residents 15–17 years of age must provide the licensing authority with the following documentation: a written statement

Table 1 The minimum age entitling to hunting without adult supervision (own juxtaposition on the basis of [1])

State	the minimum age giving access to hunting without supervision
Alabama	no age limit in the area of residence, 16 years in a territory other than the place of residence
Alaska	from the age of 10
Arizona	any licensed child or child under 10 under the supervision of a licensed person of at least 18 years of age
Arkansas	from the age of 16
Connecticut	from the age of 16
Dakota South	from the age of 12
Dakota North	from the age of 16
Delaware	from the age of 13
District of Columbia	no hunting in this area
Florida	from the age of 16
Georgia	from the age of 12
Hawaii	from the age of 16
Idaho	from the age of 12
Illinois	from 18 years of age
Indiana	at any age
Iowa	from the age of 16
California	from the age of 16
Kansas	from the age of 16
Karolina Pd.	from 18 years of age
Caroline Pn.	from the age of 16
Kentucky	no age limit for small game, under adult supervision when hunting big game and are under 16 years of age
Colorado	from the age of 16
Louisiana	from the age of 12
Maine	from the age of 16
Maryland	from the age of 16
Massachusetts	from the age of 15
Michigan	from the age of 16
Minnesota	from the age of 14
Mississippi	from the age of 12
Missouri	from the age of 11
Montana	from the age of 14
Nebraska	from the age of 12
Nevada	from the age of 14
New Hampshire	from the age of 16
New Jersey	from the age of 14
New York	from the age of 16
New Mexico	no age limit
Ohio	from the age of 16
Oklahoma	from the age of 10
Oregon	from the age of 13
Pennsylvania	from the age of 12
Rhode Island	from the age of 15
Texas	from the age of 9

Table 1 (continued)

State	the minimum age giving access to hunting without supervision
Tennessee	from the age of 16
Utah	from the age of 14
Vermont	from the age of 16
Washington	no age limit
Virginia	from the age of 12
West Virginia	from the age of 15
Wisconsin	from the age of 14
Wyoming	no age limit for hunting birds, large game from the age of 14

that they will be accompanied at all times when hunting is performed by a person 18 years of age or older (this option does not require a certificate) or a Basic Hunter Education certificate. [32], [33], [34], [73]

6 Conclusion

It is obvious that the interpretation of law cannot be limited to the wording of a legal provision alone. Only an interpretation that takes into account the entire legal system, and therefore the *ratio legis* and democratic standards, ensures respect for the rule of law. It seems that legal provisions in Poland are not consistent and that is why the interpretation of the issue at hand is problematic. In the light of the Polish criminal law hunting cannot be considered cruel as it is allowed under the Act on Hunting Law [49]. Thus, cruelty to animals is, after all, forbidden by criminal law and hunters must also comply with this. Moreover, although hunting is associated with violence in a broad sense, this ‘violence’ is not the same as the concept of ‘violence’ adopted by the lawmaker e.g. in the Act on protection of animals [50]. This perspective leads to the conclusion that Article 72(1) of the Polish Constitution of 1997 is interpreted superficially by the adherents of the ban. Applying the standards of interpretation indicated earlier, and thus taking into account the *ratio legis* of Article 72(1) of the Polish Constitution of 1997, it should be concluded that on constitutional grounds it is only a matter of protection against such acts of ‘violence’ that may violate the rights of the child. It is therefore not reasonable to automatically claim that hunting involves ‘violence’ from which a child must be protected. For some children, due to their level of development and maturity, hunting violence may have a negative impact on their well-being but for others it may not. As there are also teenagers for whom being present at a hunting event will not have any negative impact. The conclusion is that, if there are children for whom participation in hunting does not have a negative impact, Article 72(1) of the Polish Constitution of 1997 cannot be invoked to restrict the parents’ right to raise a child. But in the case of children that may be affected negatively, the article under scrutiny should be applied. It can therefore be assumed that Article 72(1) of the Polish Constitution of 1997 in its superficial, purely linguistic interpretation, and therefore misinterpretation, is being used by ideologically motivated circles to restrict the parents’ right to raise a child under Article 48(1) of the Polish Constitution of 1997.

To sum up, at present, hunting law in Poland is regulated by the Act of October 13, 1995, Hunting Law. The first version of the act did not regulate the issue of the participation of children in hunting, neither as passive observers, nor as participants helping in organizational activities. Access to weapons, and therefore the right to hunt itself, was reserved for adults. Amendments introduced to the Act by the Act of March 22, 2018 amending the Act - Hunting Law and certain other acts changed the legal status regarding the participation of children in hunting. The Act introduced the following legal provision:

Art. 42aa. It is forbidden to: (...) 15) perform hunting in the presence or with the participation of children under 18 years of age.

This provision made it impossible for persons under the age of 18 to participate in hunting in any capacity. It should be remembered here that MPs from PiS and PO political parties softened the regulation by lowering the age to 15, but the Senate rejected the amendment to the act and rigorously introduced the age of majority as a criterion for access to participation in hunting. Next, the representatives of various political factions voted for the amendment. Nevertheless, the amendment was protested against as interfering with the right to educate and raise children in accordance with the world view of their parents as described above [29]. Therefore, the question may be posed whether the age limit should not be lowered e.g. to 14–16 which is in Poland the age at which one may make numerous decisions without asking parents for the consent. That is the age when teenagers serve internships in vocational schools of their choosing. Such age limit would protect children who may not be ready to be exposed to any form of violence from being forced by parents to participate in hunts, but at the same time would give the teenagers a right to make decisions about themselves.

The introduction of a ban on the participation of children and adolescents in hunting in Poland caused a wide discussion and attempts to change this law, which ended in failure.

The juxtaposition of provisions on the participation of children in hunting in other countries allows for the conclusion that Polish law is very restrictive in this respect. Most countries have legal regulations regarding access to weapons and the possibility of using them in the course of hunting. However, they do not limit parental rights in the scope of making decisions whether the child is mentally prepared enough to participate in the hunt as a passive participant, an observer.

The debate is fueled by the multitude of possible interpretations of legal provisions regulating (i) the rights of parents to bring up their children in accordance with their worldviews [44], (ii) the responsibility of state institutions to protect children against violence, cruelty and demoralization [44], (iii) the right of a teenager to decide about himself or herself [44], (iv) hunting which is a legal and law-sanctioned activity [49], (v) the protection of animals [50], etc. So the answer to the question “who is right, who is wrong” is not obvious and both sides have numerous legal, social and psychological arguments supporting their views.

To sum up, opponents and supporters of the ban on the participation of children in hunts are undeniably involved in a heated debate. The hunters are highly dissatisfied

and are strongly convinced that they have been deprived of their constitutional rights as parents. They are afraid that the environment and biodiversity of the country are going to be negatively affected by the decreasing number of hunters in the future. The supporters of the ban, who are in general anti-hunting groups, are still dissatisfied because their main aim is to have hunting banned not only for children and teenagers but also for adults. That is the main aim of the radical proponents of animal rights who fight for ending any type of animal exploitation by humans and who want to impose vegan diets for ideological purposes. Lawyers point out that the current legal provisions that are spread in various legal acts are not compliant or may even be contradictory. That refers to the provisions of the constitutional, family, hunting, animal protection and criminal laws. As the problem is acute and complex and arouses numerous justified doubts, it seems that new legal solutions are needed to ease the tension and make the law coherent. But the enactment of new legal provisions should be preceded by merit-based discussions taking into account professional opinions of lawyers, psychologists, psychiatrists and environmentalists. The merit-based opinions are always based on credible results of research in a given domain rather than emotions. Only such opinions should be the base of laws that affect societies. Basing laws on emotions is against the fundamental principle of the democratic state in which laws should be rational, just, impartial, unbiased, promoting the principle of equality, and in the best interests of the whole nation and the country. The politicians involved in the process of enactment of laws should be aware of the fact that they are responsible for their citizens as well as the country and the environment in which we all live.

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