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STATE REGULATION OF THE RIGHT TO USE HUNTING GROUNDS IN GALICIA IN 18TH – LATE 20TH CENTURY: HISTORICAL AND THEORETICAL ASPECT

Abstract. This article presents the legal and regulatory acts of Galicia regarding the regulation of the right to use hunting grounds. The competence of bodies of state power and local self-government is covered. The sanctions of the authorities against violators of the right to use hunting grounds were investigated. The practice of their enforcement by bodies of state power and local self-government is analyzed.

Keywords: recreational hunting, Galicia, hunting grounds, hunting.

ДЕРЖАВНЕ РЕГУЛЮВАННЯ ПРАВА КОРИСТУВАННЯ МИСЛИВСЬКИМИ УГІДДЯМИ У ГАЛИЧИНІ XVI – КІНЦЯ XIX СТ.: ІСТОРИКО-ТЕОРЕТИЧНИЙ АСПЕКТ

Анотація. Розглянуто нормативно-правові акти Галичини в частині регулювання права користування мисливськими угіддями. Висвітлено компе-

тенцію органів державної влади та місцевого самоврядування. Досліджено санкції органів влади проти порушників права користування мисливськими угіддями. Проаналізовано практику їх правозастосування органами державної влади та місцевого самоврядування.

Ключові слова: мисливство, Галичина, мисливські угіддя, полювання.

ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ ПРАВА ПОЛЬЗОВАНИЯ ОХОТНИЧЬИМИ УГОДЬЯМИ В ГАЛИЧИНЕ XVI – КОНЦА XIX В. : ИСТОРИКО-ТЕОРЕТИЧЕСКИЙ АСПЕКТ

Аннотация. Рассмотрены нормативно-правовые акты Галичины в части регулирования права пользования охотничьими угодьями. Освещены компетенцию органов государственной власти и местного самоуправления. Исследована санкции органов власти против нарушителей права пользования охотничьими угодьями. Проанализирована практика их правоприменения органами государственной власти и местного самоуправления.

Ключевые слова: охота, Галичина, охотничьи угодья, охота.

Target setting. In Ukraine, granting the right of use the hunting grounds is often accompanied by political and legal conflicts, based on the shortcomings in the mechanism of their provision. The procedure granting the right of use the hunting grounds is extremely cumbersome, non-transparent and does not correspond to market principles. The law on rate of payment for the use of the hunting grounds, defined in the legislation, is not being implemented. These factors cause a negative attitude of society to public administration authorities and to the field of hunting, which does not contribute to the effective management of the entire industry. The historical experience of Galicia in the regulation of the right of use the hunting grounds allows us to work out effective mechanisms for the sustainable development of the hunting industry.

Analysis of the last researches and publications. The investigated prob-

lem was covered in the works of: I. Kasparek, T. Bresevich, E. Till, V. Buzhinsky, K. Slotvinsky, V. Shablyovsky, H. Horynya, M. Aristov. Normative legal acts that regulated recreational hunting issues are contained in the “Stenographic report of the Galician Sejm”, “Recreational hunting and fishing calendar”, in the professional recreational hunting magazine “Hunter” and the professional forest edition “Silvan”. At the same time, there are significant problems that require further research.

The purpose of the article is to identify patterns, peculiarities, and trends of the state development in Galicia regarding regulation of the right of using hunting grounds in Galicia in the 16th – the end of the 19th century.

The statement of basic materials. The development of public relations in recreational hunting lasted since the dawn of time. By the 10th century hunting was conducted for vital necessity, namely: for food and clothing.

The game then was “*res nullis*”, that is, everyone hunted when and where he wanted, the obtained game was considered the property of the hunter. Until the 10th century, there was no recreational hunting legislation, only with the beginning of the birth of the feudal system were established certain rules of hunting. Thus, in Poland, since the times of Boleslaw the Brave (967–1025), only the king had the exclusive right of hunting throughout the country. The monarch, as the exclusive owner of the hunt, redistributed these rights to secular and clerical persons. At the same time, a tax for the maintenance of birds and dog houses was introduced. With the development of feudalism, especially in its later stages, the privilege of hunting also transferred into the hands of higher secular and clerical persons. With the transfer of large areas of land to the elite it was determined that they were given the right to hunt for land received.

In Kievan Rus', where a small population lived on large areas, the right to hunt was more liberal compared to other European countries. Russian princes since ancient times had at their disposal the best places for hunting (the territory on the banks of the Dnieper river, the Desna river, etc.). Moreover, these territories were defined in the relevant legal norms. On these lands the princes kept their huntmasters, falconers, dog hunters, hawk hunters, swan hunters, rabbit hunters, and the inhabitants were obliged to keep the princes' hunters: “Since ancient times the Russian princes had in their possession certain places where they hunted. Thus, Olga the holy princess had her own places for hunting next to the Dnieper and the

Desna rivers, and she also had the right to hunt in the whole of the then Russian land” [1, p. 1–20]. The “The Tale of Past Years” describes the conflict over the hunting grounds in the 10th century. The son of the Swedish governor Svenelda — Lut came into someone else's Drevlians hunting grounds, where in 975 he was killed [2, p. 44].

Since the 12th century in Galicia, the princes began to transfer the right to hunt to monasteries, churches, gentry, and private individuals. Hunting for beavers was of great economic importance, so they often enjoyed the privilege of hunting on these animals to support monasteries. Peasants were granted the right of small hunting (that is, for rabbits, foxes, and feathered game) which belonged to peasants who paid for this a tax, consisting of skin of foxes, martens, and most of all — squirrels [3, p. 824].

Over time, the hunting standards were more fully regulated by the right. Thus, the Lithuanian statute of Sigmund the First (1507–1548) broadly described relations in recreational hunting. In Galicia, any right, including the right to hunt, were under regulation of the Statutes of the Grand Duchy of Lithuania of 1529, 1566 and 1588.

Thus, in the Statute of 1529 was a Chapter 9 “On hunting, forest, board tree, lakes, beaver hunting, hops, and falcon nest”, consisting of eleven Articles. In Article 1 “Illegal hunting in someone else's possessions” was written:

– if someone illegally hunts in someone else's possessions and irrefutable evidence is given against him, then he must pay 12 rubles for the violence, and

the Grand Prince should be paid a fee in the amount of the value of the caught game at the price that is presented below, that is, in Article 2;

– if a shooter was caught with a animal that was killed in the forest, he should be brought to the authorities, and they should have sentenced him to death on a par with other thieves;

– if someone hunted a beast on his land, and the beast went to a someone else's possession, then he can pursue the beast and kill it on the someone's land;

– if someone shot the beast on his land, and the beast went to someone else's possessions, then according to his game, the hunters can go to someone else's possessions.

In the Article 2, "The price of animals", the price was set for wild animals: twelve rubles for a bison, six for a moose, three for a deer, bear, doe, horse or mare, one for a wild boar, pig, lynx, half a rubl for a capreolus [4].

The importance of settling the issue of the use of hunting and fishing grounds can be judged from the fact that its settlements was included in the Constitution of Pylyp Orlyk of April 5, 1710 [5].

Monarchs during this period, depending on the political situation in the country, the hunting rights for the gentry at one moment were softened, at the next were again harsh. It should be noted that the provision of the Lithuanian Statute was in effect until the beginning of the 19th century on the territory of the Ukraine, and most of them were repeated later in the Collection of Little Russian Rights [6].

With the collapse of the First Polish–Lithuanian Commonwealth and the entry of the Galicia in 1772 into the

Austrian Empire, the legal regulation of the conduct of the recreational hunting is changing, in particular, the organization of hunting guards, the fight against violators of hunting rules, compensation for losses caused by hunting animals to agricultural producers. One of the first hunting laws of Galicia was the Patent of February 28, 1786, according to which the right of hunting belonged exclusively to the owner of the land regardless of their area. It should be noted that this rule regulated the right of hunting only between large landowners, since at that time peasants did not have private ownership of land. The Civil Law (Article 295) considered the game as part of the land or shares of real estate owned by the landowner. According to Austrian patents, clause 20 of 1786, clause 10 of 1849, and clause 174 of the Criminal Code unauthorized hunting was recognized as theft. However, the right clearly stated that only the right of hunting, and not the game, is a subject of real estate, therefore the hunting officer had the right only to hunt game on his land. Thus, paragraph 4 of the Austrian Patent of 1786 determined that the owner of the land lost ownership to the game if it went to another land plot. The Patent did not limit the minimum allowable area of a land plot for hunting rights of land owners. In the case the wounded game went to someone's plot, it was forbidden to pursue it with a weapon. Feathered game was not considered valuable, and it could be caught by any method, like setting nets traps on someone else's plot. Each owner of the land plot was allowed to setting snares, dig wolf pits, but with the condition to take measures so as not to injure people at the same time [7, p. 474].

Wild boars were considered as harmful animals and it was forbidden to specially raise them, with the exception of open-air farms. But along with wolves and foxes, it was allowed to hunt for them using firearms at any time, and the owner of the hunting guard was obliged to control the number of wild boars so that they would not damage the peasants' crops. If this requirement was not met, the owner of the hunting guard paid a fine of 25 zoloty and compensated any damage caused by wild boars and predators. In addition, the state authorities have an obligation to control the owners of hunting guards, so that they do not raise game on such a scale that it damages the agriculture [8, p. 379].

To frighten away game, the owners of crops had the right to protect their plot with fences, ditches, and rafts, but with the proviso that these devices are not intended for the game hunting. It was forbidden to hunt or collect eggs of wild birds on sown fields before harvesting. If the owner of the hunt neglected this requirement, he was punished by a fine of 25 rynski zoloty in favor of the person to whom he caused harm [9, p. 192]. Owners of land plots had in any way to expel game from their land, and also in cases when game was killed, the owner of the hunting guard did not have the right to demand compensation for it [10, p. 19]. Owners of the right to hunt shot stray dogs [11, p. 269–270] alone or by their hunting guard.

To promptly resolve the issue of compensation for damages, it was necessary to report the incident to the gmina, which appointed reimbursements. However, this competence of the gmina lasted until 1854, after which, in accor-

dance with the order of the Ministry of Agriculture of Austria of July 14, 1854, it was transferred from local government to public authorities. The owner of the right of hunting could not forbid the owner of the land plot to graze cattle, mow the hay, build a house on his plot.

The law ensured the ownership of the game and forbade anyone under any pretext to assign it. Article 20 of the Patent determined that the misappropriation of game was punishable as theft, that is, the same penalty was applied. Later, clause 174 of the Austrian Criminal Code of May 27, 1852 defines theft as: fishing from ponds, which are prohibited from fishing (fine — 5 zoloty); killing game on hunted guards (according to clause 178 — from 6 months to one year in a strict regime prison, and under aggravating circumstances — from one to five years). At the level with the poacher, the responsibility was borne by the person who hid the poacher. If on hunting grounds at the request of the hunting guard an armed poacher does not lay down arms or attacked, the hunter and the hunting guard were allowed to use weapons for defense purposes.

The right to hunt, which included chasing, capture and killing hunting animals for own consumption, as well as their sale, determined points 1, 4, 5 of the Patent for Galicia of February 13, 1787. Later Galician Sejm issued on January 30, 1875 The First Galician hunting law, which contained the requirements of the hunting legislation defined by Austrian patents.

Legal regulation of culling of birds was a right of hunting and applied only in case the land owner had the right to

hunt on his plot. The independent culling of birds was prohibited without the permission of the owner of the land plot. This right was regulated differently in different countries of the Austrian empire. Thus, in the Czech Republic it was not determined that culling of birds is considered a hunt. And in Tyrol, on the contrary, the birds were the object of hunting [12, p. 177–184].

Each large landowner in Galicia has the right to sell or lease the right to hunt on his land. Subjects (serfs) were not given the right to hunt to ensure that they are not separated from farming [13, p. 132–135].

In addition to legislative regulation of the granting of hunting rights, the question also belonged to the competent state executive power. In particular, the clarification from the Austrian Ministry of Agriculture of November 19, 1873 (L. 12005) provided that the tenant should employ professionally trained hunting guards to guard. Clause 14 determined that only in agreement with the state authorities, the right of guard was granted personally to the owner or tenant of hunting. The tenant of the right to hunt was obliged to hire hunting guards in a three-month period after the conclusion of the relevant contract. If these requirements were not met, the contract of the right to hunt was canceled. Clause 17 determined that the person who had obtained permission to carry weapon, as provided for by the Patent on October 24, 1852 [8, p. 369], could have the right to lease. The Administrative Tribunal by decision of June 19, 1880 (L. 1123 № 807) gave such an clarification, that hunting grounds are considered solid, even when they are obstructed by roads and

rivers. In the event that the owner of the land plot did not have the right to hunt, since the area of his plot is less than 200 morgues, he had the right to enter into an agreement with the owner of a neighboring land plot, the owner of which was also not owned 200 morgues. When concluding an agreement with the owners of neighboring land to fulfill the requirements of the minimum established continuous area of 200 morgues, it was possible to obtain the right to hunt. The cost of lease should be determined in accordance with the price that existed for lease of the right to hunt in other rent hunting guards in the same gmina [14, p. 86].

The next systematic and regulatory act that regulated hunting was a Patent of March 7, 1849. It set a minimum solid area for the arrangement of the hunting guard – 200 morgues [15, p. 41]. Owners of smaller land plots did not have the right to hunt, moreover, it was transferred to the gmina that leased it, which was provided for in Clause 7 of the Patent of 7.03.1849. According to Clause 8 of this Patent, the net income that the gmina received from leasing the right of hunting was distributed among the owners of land plots in proportion to their areas [16, p. 14].

The organization of the auction belonged to the competence of the gmina, but if it did not cope with its functions, then these functions transferred to public authorities. Currently, the minimum period for granting hunting grounds is 15 years, and according to the Austrian law in Galicia, the lease period for hunting rights was at least five years, although in some exceptional cases it was possible to conclude a contract for a shorter period. The tenant of the hunt

had to pay the lease price immediately for two years in advance and four weeks before the start of the lease. Sublease of hunting grounds was banned [8, p. 70–71].

In addition, this patent granted the right to hunt on someone else's land and in small land areas, proceeding from the principle that it is impossible to take care of game on a small area. If anyone had purchased more than 200 morgues, he should wait until the previous contract expired. Usually the minimum lease period for hunting rights was three years, and on average it was five years.

In cases where the owner of the right of individual hunting had 200 morgues of land and sold part of the land, he lost the right to individual hunting and, conversely, when the owner of the land did not have the right to individual hunting in connection with insufficient area, he acquired the right of individual hunting when purchasing the land. But at the same time, it was noted that the registration of the hunting guard will occur when at least 15 hectares will be purchased [17, p. 70–71]. The clarification of the Ministry of Agriculture of Austria of July 31, 1849 № 342 determined that the solid (continuous) area of land necessary for the organization of the hunting guard is considered the land that lies in one or several gminas that have conditions to walk on this plot without going to another plot. Public roads, railways, or rivers cannot be obstacles for a land plot to be considered as a continuous area [8, p. 362], [18, p. 1].

It should be noted that the Galician Hunting Society considered the requirements of the Austrian Patent of

1849 for a minimum area of 200 morgues is unsuitable for effective hunting management and lobbied the possibility of increasing this area to 300 morgues [19, p. 189–191].

Neither were there any violation of hunting legislation and the provision of hunting grounds. So, according to Clause 4 of the decree of the Minister of Agriculture from 1852, the executive power had the right not to approve the act on holding the auction if it turns out that during the auction, there was a preliminary collusion between its participants in order to reduce the rental price. The Galicia executive authority drew attention to the inadmissibility of violating this requirement [20, p. 367]. The authority to provide comments on the implementation of the right to hunt and the state administration of hunting industry in Austria, related to the clarification of February 14, 1869, the Ministry of Agriculture, while the Ministry of Internal Affairs dealt with cases to resolve the punishments of poachers for violation of hunting rules. The issuing of permits for the right to carry weapon state authorities issued according to the Patent on weapons of October 24, 1852. Direct execution of powers to combat poaching belonged to the Chief [8, p. 385].

The decree of the Ministry of Internal Affairs of April 25, 1867 (L. 1867) determined that the solid area of the land plot could consist of two households, which are located in the neighborhood. Each owner of a solid area of at least 200 morgues was allowed to hunt on his own land. It was also assumed that individual hunting guards cannot be attached to the gmina hunting grounds by order of the gmina. Net

income from gmina hunting should be divided annually, or at the end of the lease term for hunting grounds between all landowners who dealt with this guard. In the event of disputes in the allocation of funds for the lease of hunting grounds, the conflict was solved by the state authority, which was guided by the rescripts of the Ministry of Agriculture of 22 March 1873 (L. 446). Also, according to this document, control over the fulfillment of the requirements of renting the right of hunting relied on the gmina. For improper performance, the state power had the right to impose a fine of 10–200 gold rynski zoloty on the gmina.

One of the important normative and legal acts that regulated the lease of hunting rights was the decree of the Minister of Internal Affairs of December 15, 1852 “On the Use of the Right of Hunting”. Clause 1 defined that the right to hunt should be leased exclusively through the auction for lands belonging to gminas. The procedure for leasing provided the public announcement in the office of the county government and holding an auction three months before the end of the lease by the previous tenant. Information about the auction was posted in public places and sent to potential auction participants. Failure to comply with these requirements could be grounds for canceling the results of the auction.

The Ministry of Agriculture of Austria, by its decision of June 25, 1878 (L. 6232) determined that the auction should be guided by the Auction Law of July 15, 1852. Among other things, it was noted in this decision that the absence of a wooden hammer and a professional who can put a price does not

give the right to recognize the auction as null and void. In the event that the auction for the lease of the right to hunt did not give a result, the state executive had to take all measures to make it possible for the gmina to use the right of hunting itself. Clause 6 determined that the leasing of the right of hunting should be concluded for a period of not less than five years and only for very important reasons can be concluded for a short time, but in any case not less than three years. The winner of the auction was charged to pay the funds in advance for two years four weeks before the start of the lease, of which half was a payment, and the other half was a deposit. Sublease of the right to hunt could be possible only be with the permission of government authorities.

According to Clause 4 of the Administrative Tribunal of February 3, 1881 (L. 81, № 1000) the act of leasing the right of hunting was to be approved by the county government. The decision of the administrative tribunal of April 7, 1878 (L. 579, № 247), meant that the person who offered the highest price for leasing the right to hunt acquired this right after the approval of the auction protocol by the Chief.

Decision of the Administrative Tribunal of December 27, 1877 (L. 1759, № 180) determined that in the event of the death of the tenant of hunting rights, this right transferred to his successor.

The tenant of the right to hunt, in accordance with Clause 5 of the Patent of March 7, 1849, must, under personal responsibility, establish control over the hunting guard by employing the appropriate hunting guards. Hired to work hunting guards should have been

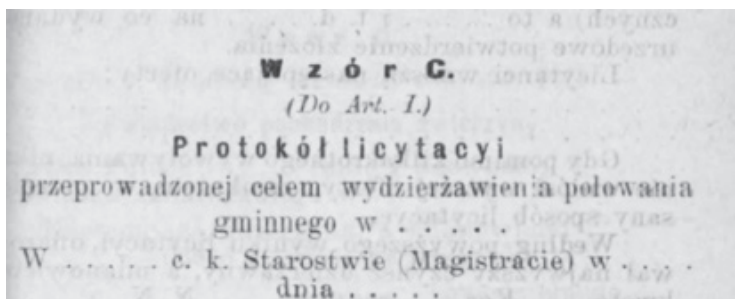


Fig. 1. Sample of the protocol of the conducted auction for the provision of hunting grounds [21, p. 145]

presented for the approval by the state provincial government [8, p. 368–369]. There was also an imperative requirement for tenants of hunting grounds for the maintenance of professional hunting guard. Thus, the Ministry of Agriculture of Austria, by a decree of June 18, 1874, (L. 7005) clarified the term “professional hunting guard”, that is, the person who passed the state exam on recreational hunting, or which the county Chief recognized suitable for the protection of hunting grounds.

The decree of November 19, 1873 (L. 12005) forbade persons who do not know how to deftly hunt to work as hunting guards [8, p. 365]. In addition, a person who claimed to be a hunting guard, according to the decree of the Austrian Ministry of Internal Affairs of November 19, 1873 (L. 12005) was to obtain a permit for weapon.

A hunter or a forest guard has the right to use weapon only if he carried a uniform of a standard pattern (Order of the Austrian Ministry of Internal

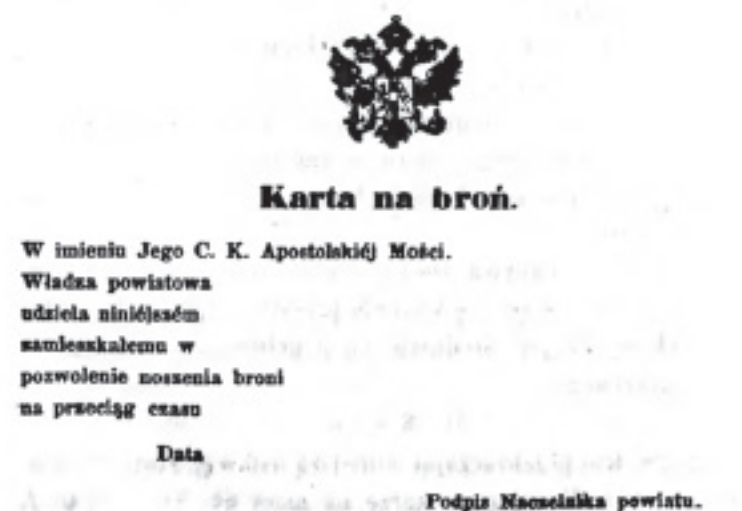


Fig. 2. In the permit for weapon was stated that the county Chief acted on behalf of his Imperial Highness. The form of the permit for weapon contained the following data: the name of the county, the name and the surname of the person who obtained the permit, his place of residence, the validity of the permit, and the signature of the head of the county [22, p. 763–768]

Affairs on January 2, 1854). Hunting guards had certain moral warnings, namely: to have an impeccable reputation, the absence of criminal records for murder, robbery, and being in prison for more than six months. The functions of the hunting guard could not be performed by persons under 20 years of age, with poor eyesight and memory, prone to drunkenness, gambling, speculation, and physical disabilities. Only after the corresponding oath was drawn up, the hunter guard was issued with the appropriate certificate.

Similar certificates were issued to fishing guards.

The register of hunting guards was entrusted to the government authorities, and the owners of the hunting households had to report the accep-

tance or dismissal of the hunting guard. For non-compliance with this requirement, a fine of 2 to 10 zoloty was imposed on them (a decree of the Minister of Internal Affairs of July 1, 1857 № 124) [8, p. 374].

Conclusions. The right to regulate the use of hunting grounds is correlated with the political regimes that determined the mechanisms for the use of hunting grounds. It was revealed that up in the 10th century there were no regulation of the right to use hunting grounds and the killing the game. From the 10th to the 14th centuries the monarchs, at their discretion, distributed the use of hunting grounds. Since the Lithuanian Statutes, in Galicia was introduced the legal use of hunting grounds. It was established that the

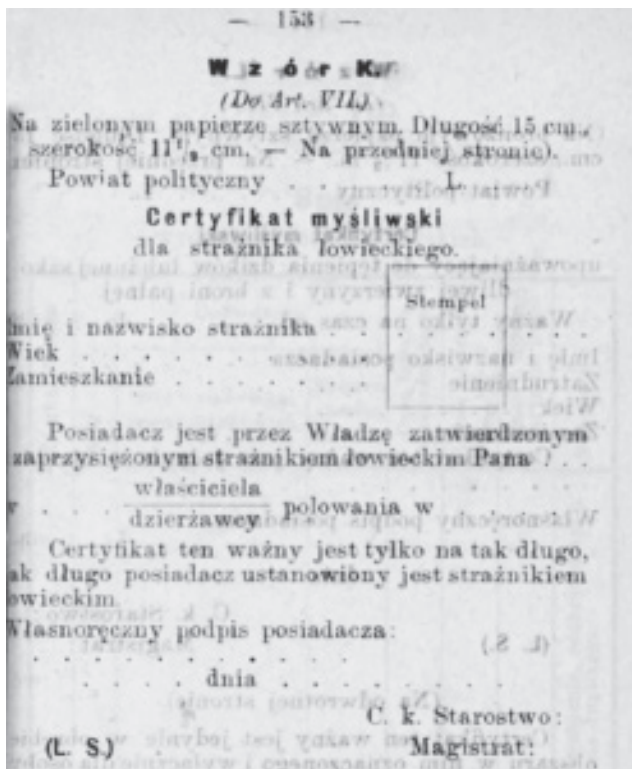


Fig. 3. The blank of the hunting certificate of the hunting guard [21, p. 153]

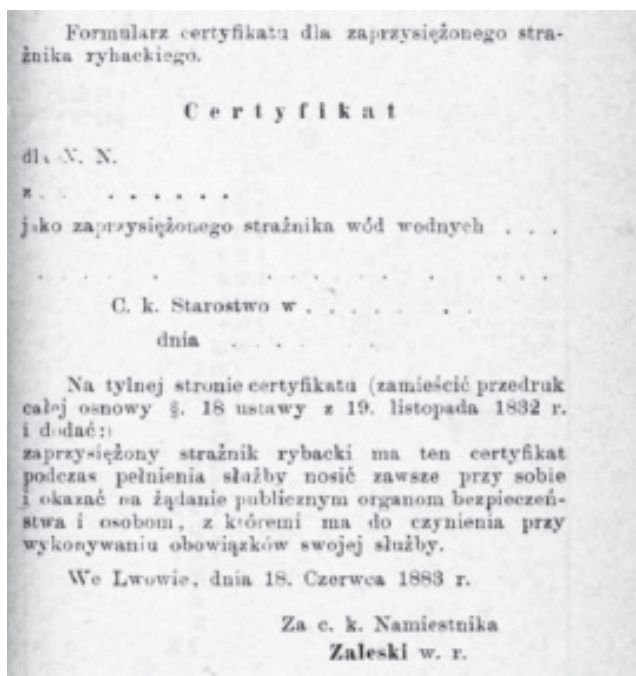


Fig. 4. Form of certificate (card) of a fishing guard [23]

main provisions that governed this issue were: the definition of ownership of hunting grounds, the procedure for renting lands, payment for their use, protection of land from illegal hunting.

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