

Research Article

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Protection of Wildlife: Analysis of Legislative Periods In Turkey

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Yaban hayatının korunması: Türkiye'deki Yasal dönemlerinin analizi

ABSTRACT:

The first legal arrangements concerning hunting and wildlife were held in “Mecelle (Ottoman code of civil law)” was declared in 1976 and was abolished in 1926. Prior to this date, hunting was carried out freely, and game animals were regarded as “waif” and there were no legal restrictive regulations. Only it was forbidden to enter the hunting areas of the Sultan and these activities were punished. When analyzed Mecelle seen that there were made general regulations on hunting and game animals about catch or ownership.

The first basic arrangement on hunting and wild animals in Turkish law was made in 1937 by the Law of Hunting, Numbered 3167. Law No: 3167 had provisions as definition of hunting animals, hunting principles and prohibitions, it was abolished in 2003 by the with the current law which numbered 4915. Law No 4915 is more detailed law than the 3167 with regards to conservation provisions and at the same time in terms of compliance with international agreements related to wildlife and biodiversity.

In this study will be discussed the process and development of the legislation related wildlife and hunting from 1900 to the present day and analyzed in terms of international agreements. These are Mecelle, Constitutions, Civil Laws, Criminal Laws, Land Hunting Laws, Forest Laws, Fishery Law and Environmental Law.

KEYWORDS: Wildlife, Hunting, Protection, Legislation, Turkey

ÖZET

Avcılık ve yaban hayatı ile ilgili ilk yasal düzenlemeler 1976 yılında ilan edilen “Mecelle (Osmanlı medeni kanunu)” ile yapılmış ve 1926 yılında yürürlükten kaldırılmıştır. Bu tarihe kadar avcılık serbest yapılmakta ve av hayvanları “sahipsiz” olarak kabul edilmektedir, avcılıkla ilgili yasal kısıtlayıcı düzenlemeler de bulunmamaktadır. Sadece padişahın avlanma alanlarına girmek yasaklanmış ve bu faaliyetler cezalandırılmıştır. Mecelle incelendiğinde av ve av hayvanları ile ilgili olarak avlanma veya sahiplenme konusunda genel düzenlemelerin yapıldığı görülmektedir.

Türk hukukunda avcılık ve yaban hayvanları ile ilgili ilk temel düzenleme 1937 yılında 3167 Sayılı Avcılık Kanunu ile yapılmış olup, 3167 sayılı Kanunda av hayvanlarının tanımı, avlanma esasları ve yasakları gibi hükümler bulunmakta

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olup, 2003 yılında 4915 sayılı Kanun Hükmünde ile yürürlükten kaldırılmıştır. 4915 sayılı mevcut yasa koruma hükümleri bakımından 3167 sayılı Kanuna göre daha detaylı ve aynı zamanda yaban hayatı ve biyoçeşitlilik ile ilgili uluslararası anlaşmalara uyum açısından daha detaylı bir kanundur. Bu çalışmada 1900 yılından günümüze yaban hayatı ve avcılıkla ilgili mevzuatın süreci ve gelişimi ele alınacak ve uluslararası anlaşmalar açısından analiz yapılacaktır. Analize konu yasal düzenlemeler ise Mecelle, Anayasalar, Medeni Kanunlar, Ceza Kanunları, Kara Avcılığı Kanunları, Orman Kanunları, Balıkçılık Kanunu ve Çevre Kanunudur.

ANAHTAR KELİMELER: Yaban hayatı, Avcılık, Koruma, Mevzuat, Türkiye.

INTRODUCTION:

With the adoption of Islam by the Turks, hunting started to be carried out with Islamic methods (Güven, 2009). When the holy book of the Muslims Quran is observed in this regard, verses related to hunting shall be found in the Chapters (Surah) the Heifer (Baqarah) and the Table (Maidah).

The order by the chapter Heifer (Baqarah) in the verse number 172 is as follows: “O you who believe! Eat of the good things We have provided for you, and give thanks to God, if it is Him that you serve.” The verse number 173 is also as follows: “He has forbidden you carrion, and blood, and the flesh of swine, and what was dedicated to other than God.”

The order by the chapter Table (Maidah) in the verse number 1 is also as follows: “O you who believe... Livestock animals are permitted for you, except those specified to you; but not wild game while you are in pilgrim sanctity.”

The second verse of the same Chapter goes as follows: “O you who believe!.. When you have left the pilgrim sanctity, you may hunt.”

The order of the third verse of the same Chapter is also as follows: “Prohibited for you are carrion, blood, the flesh of swine, and animals dedicated to other than God; also the flesh of animals strangled, killed violently, killed by a fall, gored to death, mangled by wild animals—except what you rescue, and animals sacrificed on altars; and the practice of drawing lots...”

The order in the fourth verse of the same Chapter is as follows: “O Mohammad! They ask you what is permitted for them. Say, “Permitted for you are all good things, including what trained dogs and falcons catch for you.” You train them according to what God has taught you. So eat from what they catch for you, and pronounce God’s name over it. And fear God. God is Swift in reckoning.”

The ninety-sixth verse of the Chapter mentioned above is as follows: “Permitted for you is the catch of sea, and its food—as sustenance for you and for travelers. But forbidden for you is the game of land while you are in pilgrim sanctity...”

As it can be understood from the verses above quoted from the Quran, the animal to be hunted has to be clean and halal. Therefore, the flesh of animals strangled, killed violently, killed by a fall, gored to death, and mangled by wild animals and the animals dedicated to other than God are forbidden for the Muslims.

Using trained animals for hunting is allowed, whereas it is forbidden to hunt in pilgrim sanctity (while wearing ihram, which is a kind of clothing without stitches ad worn during fulfilling the pilgrimage duty) by the Quran. Consequently, hunting is allowed according to Islamic resources.

Although Quran does not include any verses that prohibit hunting for pleasure or with sportive purposes, it is found inconvenient when the general understanding of Islam; the basic principles of the Quran and the opinions of the Islamic scholars are considered (Akdemir, 2008; Dartma, 2014).

The Islamic Law forms the basis of the system that the Turkish Civil Code adopts about the possession of prey animals. Prey animals are assumed as unclaimed good and property right is acquired through capture (Ayan, 2012; Kochisarlioglu, Erisgin, 2013). Acquiring property right through capture is only possible on forest lands and rural areas (the lands that bear Res nullius feature) if the Sultan allows, or the current laws allow (Sukru, 1988).

1. Hunting Activities among the Ancient Turks and in the Ottoman Empire

Hunting was one of the most important activities among ancient Turks. They created traditional hunting methods using trained animals such as hounds and raptors. Children used to start learning how to use swords and spears, how to shoot arrows, how to ride and hunt at early ages. These activities which are related to hunting also served for a kind of combat training. Chase hunting activities, combat-like games, and similar entertainment activities had been organized. These traditions of ancient Turks were inherited by Seljuk and Ottoman Empires. A specific organization including the guild of janissaries was formed in the palace for this purpose. Those dealing with hunting activities were called "Imperial Hunters (private hunters of the Sultan)" (Hus,1974; Turkmen, 2009; Ozer, 2015; Kucukosmanoglu, Arslangundogdu,2009).

The hunting activities hadn't been dealt with for a long time in our country except for the traditional and free hunting activities explained above and therefore, hunting activities had been carried out in an uncontrolled way. Even though aforementioned Imperial Hunters' organization was abolished and free hunting was terminated after the proclamation of the political reforms, no codes that regulate the hunting activities by accurate provisions were legislated (Hus, 1974). "Mecelle" (the Ottoman code of civil law), which came into force between the years 1869 and 1877, regulated the mentioned issues. However, the mentioned code only prohibited the hunting of domestic animals and wild animals that had been domesticated and just stated the prey animals hunted by hired hunters and possessed dogs to belong to their owners (Berki, 1959; Aydin, 2003; Erguney, 1965). The number of the provisions of Mecelle" related to hunting is 16 (the articles between 1292 and 1464). These articles are as follows:

1292- Hunting with the arms such as spears and rifles; hunting using nets and traps; hunting using trained animals such as hounds and raptors such as hawks are all permissible.

1293- Prey animal is the wild animal which is afraid of human.

1294- Not only domestic animals but also animals domesticated by human are also prohibited to hunt.

1295- The prey must be able to run away from the human.

1296- The one who eliminates the conditions for an animal to be called as prey is assumed to catch it.

1297- The prey belongs to the one who catches it.

1298- On the condition that the bullets of two different hunters shoot the same hunt at a time, the prey shall be shared equally.

1299- On the condition that the trained hounds of two different hunters catch the same prey at the same time, similarly the prey shall be shared equally. If each of these hounds catches one prey separately, each prey belongs to the owner of each hound. On the condition that one hound knocks the prey down and the second hound kills the prey, then, if the first dog injures the prey so badly that the prey is unable to escape the prey belongs to the owner of that hound.

1300- One is allowed to possess the fish in someone else's ditch or water channel through hunting on the condition that the only way to catch the mentioned fish is to hunt.

1301- If someone prepares an area for fishing and some fish swim in this area, the fish that can be caught by relieving water belongs to the owner of that fishing area. However, if it is impossible to catch the fish without hunting due to the excessive amount of water, someone else is allowed to possess the fish by hunting.

1302- If any kind of prey animal enters in one's property, the owner of the property who shuts the entrance of that property for the purpose of catching the prey possesses it. But if someone else catches the prey until the owner of the property shuts the entrance then he possesses the prey.

1303- If anyone sets a trap or a net for the purpose of catching a prey, he owns the prey caught. However, if anyone spreads a net before setting it to catch a prey and a prey gets caught while the net is spread, the hunter does not own the prey. Hence, a prey caught falling in a pit in someone's land can be owned by someone else, but if the pit is dug by the owner of the land for the purpose of hunting, the prey belongs to the owner of the land.

1304- In the event that a wild animal builds a nest or spawns in someone's property, the owner of the property cannot possess the animal. If someone else captures the eggs or the cubs, the owner of the property cannot reclaim. However, if the owner of the property had prepared the property for wild animals to build nests or to spawn deliberately, the cubs and the eggs belong to the owner of that property.

1305- If honeybees construct a beehive in someone's land, the honey made by those bees is assumed as the harvest of that land and therefore it is the property of the landowner. No one is allowed to touch but the landowner. However, the owner has to pay a tithe for the honey.

1306- The honeybees that gather in someone's hive shall be assumed as captured property. The honey made by those bees belong to the owner of the hive as well.

1464- If a swarm of bees that leaves someone's hive lands in someone else's property and the owner of the property captures the swarm, the owner of the hive has the right to get back the swarm.

As it can be understood from the provisions listed above, prey animals used to be assumed as unclaimed property (Res nullius) of public property; property right on these animals used to be acquired through capture; it used to be totally free to benefit from these animals; the intention to possess used to be effective (Animus possidendi / occupandi) and the efforts made for the purpose of the mentioned intention used to be attached importance.

2. Republican Period

Two different codes which are direct regulations on hunting exist within the Republican Period. The first one is The Act No 3167 on Land Hunting, which came into force in 1937, and the other one is The Act No 4915 on Land Hunting, which repealed the former one.

2.1.1. The Act No. 3167 on Land Hunting

The first law including essential regulations about prey animals, hunting, and wild-life in the Republican Period was The Act No. 3167 on Land Hunting, which came into force in 1937. The Act had stated in its 1st Article that the hunting of all kinds of wild animals, either harmful or useful (including mammals, birds, and reptiles), that live within the borders of Turkey using any means of hunting was subjected to the provisions stated under the Act. The Act No. 3167 classified prey animals in three groups:

I – Those that can be hunted without season restriction:

- A) Lynxes, wolves, coyotes, wild boars, leopards, hyenas and tigers among the mammals;
- B) Crows among the birds;
- C) Snakes and tortoises among the reptiles.

II – Those hunting of which are restricted in specific seasons:

- A) Wildcats, martens, skunks, squirrels, weasels, otters, gazelles, badgers, beavers, hares, foxes, roe deer, wild goats, and bears among the mammals;
- B) Partridges, roosters, male pheasants, the Peacock family, the common quail family, mallards, golden orioles, wild geese, swans, woodcocks, cranes, bustards, ravens and swamp birds among the birds.

III – Those hunting of which are prohibited:

- A) Deer, mountain sheep, wild kids, fawns, bats and hedgehogs among the mammals
- B) Francolins, domesticated doves, kestrels, kinglets, common cuckoos, woodpeckers, nightjars, female pheasants, grouse, nightingales, grey shrikes, swallows, eagle owls, owls and starlings among the birds.

It was stated in the act that whether hunting of the animals apart from those listed above are permitted or not would be decided by the “hunting commissions” established according to the Act. The Act also regulated hunting seasons, hunting methods and hunting prohibited areas. The Act prohibited hunting with poison; illegal hunting on forestlands; hunting in residential areas and on planted possessed areas. It also took the cubs and the eggs of the animals except for those that can be hunted without season restriction under preservation and forbids damage.

The Act No. 3167 subjected hunting to permission and authorized the forest administration for official transactions related to hunting and for the controlling of hunting activities. The Act ordered not only the establishment of a central hunting commission to determine the procedures and principles of hunting and to specify the animals to be permitted for hunting but also the establishment of subunits such as provincial hunting commissions and county hunting commissions.

The Act regulated those who violate the prohibitions by the law to be imposed an administrative fine under punitive articles. Only those who hunt using poison were stated to be sentenced to imprisonment up to three months. Forest rangers, countryside rangers, and village rangers were authorized to monitor whether prohibitions had been followed or not.

2.1.2. The Act No. 4915 on Land Hunting

The Act No. 3167 was repealed in 2003 when the Act No. 4915 came into force. By contrast with the Act No. 3167, which became insufficient in satisfying the needs in time; the Act No. 4915, which is still in force, has brought significant innovations to hunting and wildlife issues with contemporary and effective provisions.

The objectives of the Act, which is obviously influenced by the European Union Regulations and International Conventions, have been stated as conserving the prey animals and wild animals with their natural habitat for the sake of sustainable wildlife management; developing this mentioned natural habitat; bringing hunting of the prey animals under control; regulating hunting; putting hunting grounds to good use in a profitable way for the national economy and providing cooperation with relevant public legal entities and private entities.

The Act covers prey animals, wild animals, their natural habitat, the conservation and development of this habitat; prey animals and wildlife management; forming hunting grounds; running those grounds and having them run by the state, regulating hunting, hunting tourism, the reproduction of wild animals and their commerce; raising the awareness in public; training of hunters; the crimes and misdemeanors against prey animals and wildlife; monitoring those crimes and misdemeanors and penalties.

The Act No. 3167 included a list of animals which were allowed to be hunted whereas the Act No. 4915 states that the animals included in the list prepared by the Ministry shall be allowed to be hunted. Thus, only the animals included in the list which is prepared and can be updated annually by the Central Hunting Commission are allowed for hunting. Moreover, a significant part of the animals defined as prey animals under the Act No. 3167 has been taken under protection with the Act No. 4915.

The Hunter is defined by the Act No. 4195 as “those who had received hunting training and hunting license”. The Act includes provisions regulating hunting grounds (public and private ones) and forming these grounds (related direction also exists) which were absent in the Act No. 3167. Besides, the structure of the Central Hunting Commission, which takes decisions related to hunting and wildlife preservation, has been identified with its subcommissions and the number of the members of the Commission has been increased. Wildlife Protection and Improvement Areas and Wildlife Reproduction Stations have been established. Another innovation introduced by the Act No. 4915 is hunting tourism. This type of tourism, which has a directive on how to be practiced, can only be run by the tourism agencies that have a license for arranging hunting. Hunting tourism, in which both foreign and domestic participants are allowed to participate, can only be carried out on the hunting grounds and only for the animal species and within the limits announced by the Ministry. The Act No. 4915 also regulates the procedures and principles related to the reproduction of prey / wild animals and their commerce and the Act includes provisions and restrictions which are in accordance with the international convention CITES, to which Turkey is of the parties. The Directive relating the practices exists as well.

The Act No. 4915 also regulates the procedures and principles related to the reproduction of prey / wild animals and their commerce and the Act includes provisions and restrictions which are in accordance with the international convention CITES, to which Turkey is of the parties. Prohibited ways of hunting according to the Act are as follows:

- Using poison,
- Using smoothbore automatic rifles, semiautomatic rifles, shotguns and similar, which are not limited to take only two cartridges at a time; air rifles and air guns.
- Using vehicles, aircraft and any kind of floating vehicles which are not defined by the Central Hunting Commission; using devices that emit sound, magnetic waves, and light; using hunting decoys, traps and similar tools.

When the penalties for prohibited acts by the Law are observed, it is seen that the following acts are considered as crimes (table 1):

- Poisoning the natural habitat of prey animals and wild animals that provide them with food and shelter shall be sentenced to imprisonment from two years up to five years.
- Causing any species' danger of extinction or disturb natural balance by hunting shall be judged with imprisonment starting from two years up to five years.
- Using any kind of poison while hunting shall be sentenced to prison from one year up to three years and shall be imposed a punitive fine which shall be calculated on not less than fifty days.

The penalty for the prohibited acts apart from the acts mentioned above is regulated as administrative fine and those acts are considered as misdemeanors (table 1). The acts that are considered as misdemeanors are generally, hunting wild animals that have been put under protection; violating the designated hunting season; using prohibited hunting methods; hunting without license; violating the procedures and principles for hunting tourism; violating the procedures and principles about the reproduction of wild animals and their commerce; hunting on preservation areas and violating the principles of hunting on the hunting grounds.

According to the Act No. 4915, the General Directorate for National Parks and Wildlife is the authorized institution on the issues related to hunting and wildlife. The administrative fines to be issued as per the Act are issued by National Parks Rangers and the chiefs under forest subdistrict directorate. Besides, in the event of destruction in the ecosystem and depletion in wildlife due to illegal hunting, the Ministry (the Ministry of Food, Agriculture, and Livestock) claims damages calculated on the rates it had announced apart from the imprisonment and administrative fines. Otherwise, the Ministry files suits against the offenders.

Table 1: Crimes and Misdemeanors according to the Act No 4915

CRIMES	
Prohibitive Provision	Criminal Sentence
It is forbidden to empoison the natural habitat of game animals and wild animals that provide them with food, shelter, reproduction occasions and protection. (Article 4/4)	Those who empoison the natural habitat of game animals and wild animals where they are fed and sheltered shall be sentenced to imprisonment from two years up to five years. The offenders' hunting license shall be cancelled and they shall not be certificated once again as well.(Article 21/4)
In the case that one causes any species' danger of extinction or disturb natural balance by hunting, (Article 21/7)	The offender(s) shall be judged with imprisonment starting from two years up to five years. (Article 21/7)

It is prohibited to use any kind of poison while hunting. (Article 6/2)

Those who use any kind of poison while hunting shall be sentenced prison from one year up to three years and shall be imposed punitive fine which shall be calculated on not less than fifty days. The offenders' hunting license shall be cancelled and they shall not be certificated once again as well.(Article 24/2)

MISDEMEANORS

Prohibitive Provision

Criminal Sentence

It is prohibited to hunt wild animals that have been put under protection.

Each violation shall be imposed administrative fine of ₺ 628 separately. (Article 21/1)

It is prohibited to disturb wild animals; to pick their youngsters or eggs; to damage their shelter during their reproduction, molting and migration periods.

It is prohibited to disturb mammals during their winter rest. (Article 4/1)

It is prohibited to violate the designated hunting time and amount. (Article 5/1)

Each violation shall be imposed administrative fine of ₺ 628 separately. (Article 21/1)

In the case that some species face the danger of extinction hunting on hunting grounds where hunting is permitted shall be prohibited for a certain period of time. (Article 12/3)

Each violation shall be imposed administrative fine of ₺ 628 separately. (Article 21/1)

It is prohibited to cause the wildlife or the ecosystem either to be affected negatively or to be ruined by leaving the waste of the structures and facilities without being purified on wildlife conservation and development areas, reproduction stations and related areas. (Article 4/5)

Violations shall be imposed administrative fine of ₺ 73.747 (Environmental Law No. 2872 Article 20/k)

Related to the protection, advancing and sustainable managing of game animals and wildlife, national; regional and local television and radio stations that broadcast within the borders of Turkey are obliged to prepare educative, warning and informative material to be broadcasted 15 days before the start of the hunting season for the sake of public support, for the purpose of informing the society and creating awareness and for educating both hunters and the society. These broadcast shall continue for 15

Administrative fine shall not be less than ₺1,000 for radio stations. The fine amount shall not be less than ₺10,000 for television stations and arbitrary media service providers. (The Law on the Establishment and Broadcasting Services of Radio and Television Stations Article 32)

days following the end of the hunting season as well. (Article 5/3)

In the case that the private hunting grounds are discovered to be run out of their purpose in conclusion of audits,

The owners or the keepers that run the grounds by means of hiring shall be imposed administrative fine of ₺ 3.820 (Article 22)

Those who hunt on hunting grounds without permit and those who hunt on the hunting grounds where hunting is prohibited by the Central Hunting Commission. (Article 22)

It shall be imposed administrative fine of ₺ 628 (Article 22)

Those who hunt on the grounds where hunting is prohibited through special laws and those who hunt on Wildlife Protection Areas, Wildlife Development Areas and Reproduction Stations (Article 23).

shall be imposed administrative fine of ₺ 947 (Article 23)

It is prohibited to hunt using smoothbore automatic rifles, semiautomatic rifles, shotguns and similar, receivers of which are not limited to take only two cartridges at a time; air rifles and air guns.

Each violation shall be imposed administrative fine of ₺ 464 separately. (Article 24/1)

It is prohibited to hunt using trained animals

It is prohibited to hunt using vehicles, aircrafts and any kind of floating vehicles which are not defined by the Central Hunting Commission. It is also prohibited to hunt using devices that emit sound, magnetic waves and light; using hunting decoys, traps and similar tools. (Article 6/1)

Those who hunt without receiving the hunting license defined by the Law (Article 24/3),

Shall be imposed administrative fine of ₺ 625 (Article 24/3)

Those who hunt without hunting permit (24/3)

Shall be imposed administrative fine of ₺ 464.(Article 24/3)

Those who hunt without receiving hunting certificate for foreigners or an interim hunting certificate.(24/4)

Shall be imposed administrative fine of ₺ 3.180 (Article 24/4)

Those who hunt without keeping their hunting license and hunting permit with them while hunting (24/5) shall be imposed administrative fine of ₺ 52 (Article 24/5)

The foundations, agencies and persons that organize hunt tours; photo and film shootings; game animal and wild animal watching events without receiving License for Arranging Hunting Shall be imposed administrative fine of ₺ 31.903 with the foundations, agencies and persons that mediate those who hunt without having interim hunting certificate.

Foreigners who violate the limitations of species to be hunted and grounds to hunt on specified on interim hunting certificates. (Article 25) Shall be imposed administrative fine of ₺ 15.947 (Article 25)

It is prohibited to trade, transport, import and export both local and foreign wild animals, their meat, eggs, skin, peltry, horn etc. with their derivatives trade of which is prohibited as per to the international conventions to which Turkey is a party. (Article 18) Those shall be imposed administrative fine from ₺ 1.586 to 7.967 (Article 26)

Not only state institutions and organizations but also natural and legal persons are allowed to raise game and wild animals which naturally live in Turkey so long as they receive necessary permission by the Ministry. Violation shall be imposed administrative fine from ₺ 1.586 to 7.967 (Article 26)

Releasing afore mentioned animals is also subject to permission by the Ministry.

The Ministry may happen to permit the import and raising of the foreign species that are not likely to damage the species naturally live in Turkey within the scope of international obligations after consulting related institutions and organizations. (Article 4/1)

It is prohibited to sell wild animals import of which is allowed by the Ministry within the scope of international obligations for the purpose of exhibition or performance. (Article 18) Violation shall be imposed administrative fine of ₺ 9.563 (Article 26)

**All kind of administrative fines are updated with cabinet decree annually. Fines mentioned here are determined for the year 2020.*

COMPENSATION

Except for administrative fine and imprisonment, the Ministry claims compensation for the destruction in wildlife and the ecosystem due to illegal hunting according to the rate specified by the Ministry. (Articles 4/6, 28/5)

3. Influence of the International Conventions on the Act No. 4915

The influence of the International Conventions, to which Turkey is one of the parties, on the Land Hunting Law No. 4915 shown in the table below.

Table 2: Influence of the International Conventions on the Act No. 4915

Convention Name, Article No., and the Content			Article No. under the Act No. 4915 and the Content	
Convention Name	Article	Content	Article	Content
The Convention of EU on The Conservation of European Wildlife and Their Natural Habitats (Bern Convention)	6	The following will, in particular, be prohibited for the species under protection: b. the deliberate damage to or destruction of breeding or resting sites; c. the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention; d. the deliberate destruction or taking of eggs from the wild or keeping these eggs even if empty;	4/1	It is prohibited to hunt wild animals that have been put under protection. It is prohibited to disturb wild animals; to pick their youngsters or eggs; to damage their shelter during their reproduction, molting and migration periods. It is prohibited to disturb mammals during their winter rest.
	10	The Contracting Parties undertake, in addition to the measures specified in Articles 4, 6, 7 and 8, to coordinate their efforts for the protection of the migratory species specified in Appendices II and III whose range extends into their territories.	5/1	The Ministry shall take the necessary protection measures in order to protect the species under the risk of extinction and the species classified as rare, sensitive, endemic and migratory.
The Convention on Wetlands of International Importance Especially As Waterfowl Habitat (Ramsar Convention)	3	The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.	4/4	It is forbidden to poison the natural habitat of prey animals and wild animals that provide them with food, shelter, reproduction occasions and protection. Contaminating, draining and changing

			natural characteristics of wetland areas are also prohibited.
International Convention for the Protection of birds (Paris Convention)	5	6/2	It is prohibited to hunt using smoothbore automatic rifles, semiautomatic rifles, shotguns and similar, which are not limited to take only two cartridges at a time; air rifles and air guns. It is prohibited to hunt using vehicles, aircraft and any kind of floating vehicles which are not defined by the Central Hunting Commission. It is also prohibited to hunt using devices that emit sound, magnetic waves and light; using hunting decoys, traps and similar tools.
Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites Convention)	2	18	It is prohibited to trade, transport, import and export (either dead or alive) not only the local and foreign wild animals but also animals which are hunted without due the procedures on hunting wild animals, their meat, eggs, skin, peltry, horn etc. with their derivatives trade of which is prohibited as per to the international conventions to which Turkey is a party.

4. Lawsuits against Hunting and Wildlife

When the judicial decisions on hunting and wildlife in Turkey are examined, it will be observed that lawsuits claiming compensation for the damages the ecosystem encounters due to illegal hunting form the majority. On the other hand, lawsuits against the distraintment on the arms and equipment used during hunting can also be encountered. Actions of objection for the imposed administrative fine; lawsuits concerning if the acts of illegal hunting are to be considered as

a crime or misdemeanor; lawsuits filed with the demand for the annulment of the lands designated as Wildlife Protection and Improvement Areas can be encountered as well.

5. Constitutions on Hunting and Wildlife and Other Related Laws

The articles of the Constitutions of 1924, 1961 and 1982 of Turkey on hunting, wildlife and its habitat and relevant laws that are currently in force have been analyzed and related provisions have been set forth.

5.1.1. The Act No. 4915 on Land Hunting

When the Turkish Constitutions are observed in terms of the presence of the articles concerning hunting, wildlife, and its habitat, it has been observed that the Constitutions of 1924 and 1961 do not include explicit provisions on the issue. On the other hand, it has been found that the Constitution of 1961 had implicitly ensured that the state was responsible for the preservation and the development of forestlands and the acts to damage these lands would not be permitted (Anayasalar, 2006). In spite of not including any explicit provisions the Constitution of 1982 states, like the Constitution of 1961, that the forestlands are under state supervision and acts to damage these lands will not be permitted. Additionally, Article 56 of the Constitution of 1982 states that protecting and improving the environment and to preventing the pollution are the duties of the state and its citizens.

5.1.2. Turkish Civil Code

The latest Turkish Civil Code No. 4721, which came into force in 2001 and repealed the former code of 1926, includes nearly the same provisions with the repealed one. According to the related article, on the condition that the preys captured break free and the hunter does not immediately look for those preys or try to catch them, mentioned preys shall be assumed unclaimed. If the domesticated animals happen to become wild and do not return to their owners, they shall become unclaimed as well (Article 768).

5.1.3. Turkish Criminal Law

The latest Turkish Criminal Law No. 5237, which came into force in 2004, imposes punishment for contaminating the environment and for harming the animals. Related article states that, on the condition that the deliberate pollution of the environment is committed through the wastes that can cause unrecoverable disease on both animals and human beings; through the wastes that can cause decline in the fertility of both the animals and the humans or through the wastes that can mutate the natural characteristics of the animals and humans, the offence shall be sentenced not less than five year-imprisonment and administrative fine of up to one day. On the condition that the mentioned crime is committed by negligence, the offense shall be sentenced to imprisonment of one year up to five years (Articles 181- 182).

5.1.4. Animal Protection Law

Animal Protection Law No. 5199, which came into force in 2004, has introduced some general regulations on the protection of wild animals, but when the field of practice considered, the law mostly covers domestic and domesticated animals. The objectives of the law are stated to be ensuring that the animals live in a comfortable environment; they are well-behaved; they are protected against suffering from pain and torture and unjust treatment is avoided. The Law orders the Provincial Animal Care committee to take necessary precautions considering the decisions of the Central Hunting Commission defined by the Act No. 4915 so that the habitat of prey animals and wild animals is protected.

5.1.5. The Forestry Law

The Forestry Law No. 6831 of 1956, which is currently in force, prohibits fishing in the lakes, ponds, dam lakes, and rivers using dynamite or poison. The offenders shall be imposed an administrative fine (Article 14). The Law No. 6831 also states that hunting on private forestlands requires the permission by the owner of the property (Article 56).

5.1.6. The Environmental Law

Destroying biodiversity (9/a); violating the procedures and principles, defined by the directive, on the protection and the use of wetlands (9/e); putting into commercial use of rare plant and animal species with the species which are under the risk of extinction in order to ensure the sustainability of biodiversity (9/f) are prohibited by the Environmental Law No. 2872 of 1983 (Article 20).

5.1.7. The Aquaculture Law

The first regulation in the Republican Period regarding the aquaculture and fishing/hunting was fulfilled in 1971 with the Aquaculture Law No. 1380. Seafood and Fishing/Hunting Directorate that was established in 1934 tried to manage aquaculture and hunting related to them through statutes until the enactment of the Law No. 1380 (Aksungur, 2004). The Law No. 1380, which is currently in force, covers the issues related to the protection, production, and control of aquaculture. The Law identifies the aquaculture as the plants and animals and their eggs that exist in the seas and inland waters (the animals covered by the Act on Land Hunting are excluded) (MEGEP, 2008).

RESULT:

When the period from the adoption of Islam to modern-day is studied in terms of hunting and wildlife, it will be observed that hunting has always become one of the most prominent issues and has always been studied on. Until the proclamation of the republic, it had been a part of meeting the food requirement and a kind of preparation activity for battles. On the other hand, it is clear that there used to be disorder and lack of control. With the legal regulations introduced after the proclamation of the republic bringing order to hunting and consequently ensuring the protection of wildlife and the habitat has been aimed.

It is observed that a significant progress about hunting and the protection of wild animals has been made with the Act No. 4915 on Land Hunting, which is one of the laws updated during the European Union accession process. Deterrent provisions on the preservation of prey animals, wild animals, and their habitat have been introduced with the Act that considers the basic principles of international conventions. However, some problems with monitoring the practice of the written provisions still exist.

Particularly, liable administrative units encounter difficulties in controlling wide areas with the limited number of personnel and equipment and in this regard, difficulties with the detection of those violating the Act are run into. Another issue is that different sanctions are applied for the same prohibited act committed in different fields where different laws are applied. This violates the principle of equality. For instance, when the hunting activity is actualized using poison in the ponds within the borders of forestlands, an administrative fine is imposed. However, when the same offense is committed outside the borders of forestlands, the punishment shall be imprisonment.

A similar situation can be mentioned about bio-smuggling. Another point of criticism is that the Act No. 4915 bans counterclaims against the decisions concluded by the Central Hunting Commission (Aydin,2009). This is a regulation that restricts the access to justice.

Another point is that despite a modern and effective law on land hunting is in force, the aquaculture law is far behind meeting the contemporary needs. A regulation concerning the issue is found necessary.

Finally, the necessity for Turkey to be a party to the Bonn Convention on the Conservation of Migratory Species of Wild Animals of 1979 (International Convention for the Protection of Birds) is concluded.

Etik Standart İle Uyumluluk

Çıkar Çatışması: Yazarlar herhangi bir çıkar çatışması olmadığını beyan eder.

Etik Kurul İzni: Etik Kurul iznine gerek yoktur.

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