

GAME-INFLICTED DAMAGE AND ITS COMPENSATION

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Summary: In each society, hunting is a specific activity which requires separate and additional legal regulations. Game-inflicted damages and those which may occur during hunting, as well as the manner of their compensation, are the topic of this paper. The Law on Game and Hunting of Serbia³ standardises the issue of liability for damages and, earlier this year, the Ministry of Agriculture passed a By-Law⁴ regulating the details of measures towards prevention of damage to game, the procedure and method of damage assessment. The authors of this paper deal with theoretical postulates of damage, liability for damages and its consequences in practice, through analysis of cases from judicial practice of our courts and those in neighbouring countries.

Key words: damage, game, hunting grounds beneficiary, liability, fault, indemnity holder

Introduction

One of the basic principles of civil law is the principle of disposition. According to that principle, a civil legal or a property legal relationship is established, terminated and modified primarily of the parties' free will. However, there are certain property legal relations which arise by operation of law, such as is the case with liability for damages. Therein, „a damage is a loss suffered by a person on his/her own property, provided that such a loss is caused by an illicit act.“⁵

For emergence of liability for damages, certain assumptions are required, cumulatively. There must exist an entity responsible for the damage (the indemnifier), and an entity claiming damages (the indemnity holder). Besides, there must exist an indemnifier's injurious act, as legal grounds for liabilities and damages on the indemnity holder's side, as well as a causal-consequential relationship (causal nexus) between the injurious act and the consequences and, finally, illicitness of such an injurious act.

„For the legislator, the liability represents the means for redistribution of injurious consequences of an event, and the injurious act is the means for imputation of liability.“⁶ Liability for damages is based on an indemnifier's fault (subjective liability or fault-based liability) or a risk from a hazardous object or activity (objective liability). For the latter, there is liability for damages regardless of fault. It means that the indemnity holder does not need to prove that the damage is the indemnifier's fault. This is clearly deduced from Article 154 para 2 of the Law of Contract and Torts, stipulating: „For any damage inflicted by objects or activities generating increased danger for the environment, the liability shall be ensured regardless of fault“, and Article 173 of the same law stipulates: „Any damage inflicted in relation to a dangerous activity shall be considered generated by such an object or activity, unless proven that these are not the cause of damage“. In case of damage, the indemnity holder does not need to prove that a dangerous object or activity did not cause the damage. It is sufficient to prove that such objects or activities took part in an injurious event. This assumption of causality may be refuted by the accused person if he/she proves that his dangerous object or activity did not cause the damage in that particular case, and that the damage was caused by another cause. Any damage inflicted by a dangerous object is compensated by its holder, and the damage inflicted by a dangerous activity by the person pursuing that activity.⁷ Pursuant to the provision of Article 177 of the Law of Contract and Torts, the holder shall be dismissed from liability for inflicted damages if proving that the damage originates from another cause beyond the held object, the action of which could not have been predicted, avoided or eliminated (force majeure). The holder of such an object shall be dismissed from liability if proving that the damage was caused solely by actions of the indemnity holder or a third party.

A general rule of the civil law is that everybody is obliged to refrain from actions which might cause damage to another person. If anyone inflicts damage to another person, he/she is liable to compensate it. The damage may take various forms: it may appear as diminishment or loss of someone's property (ordinary damage, *damnum emergens*), but also as prevention of its increase (profits given up, *lucrum cesans*), provided that such increase of property

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⁴ Full title of the by-law is the By-Law on Measures for Prevention of Damage to Game and Procedure and Method of Damage Assessment. Published in „Official Gazette of RS“ No. 2/12.

⁵ Milan Počuča: Compensation of Intangible Damages from Suffered Fear, Business Academy Novi Sad, 2008, p.10.

⁶ Marija Karanić Mirić: Fault-Based Tort Liability in Civil Procedure, Faculty of Law of the Belgrade University, Publishing and Information Centre, Belgrade, 2009, p.25.

⁷ Refer to Article 174 of the Law of Contract and Torts „Official Gazette of SFRY“ Nos.29/78,39/85,45/89, and „Official Gazette of FRY“ 31/93.

would be entirely certain in a regular course of actions. This concerns substantial damage. Damage may also be non-pecuniary, when it appears as suffering from inflicted psychological and physical pain or fear. "A claim for compensation of non-pecuniary damages is a claim for moral compensation to the indemnity holder, restitution of disturbed psychological balance. A fair monetary compensation should meet this requirement, to enable the moral compensation to the indemnity holder, restitution of disturbed psychological balance, that is, to give the indemnity holder certain substantive satisfaction which would constitute moral compensation and reconstitute the calm in his disturbed psychological balance."¹

Scope of Liability for Damages Which May Be Inflicted During Hunting

The term 'game' is defined by the Law on Game and Hunting. Pursuant to provisions of Article 4 para 1 item 4 of this law, „the game is a species of wild mammals and birds determined by law“. In referent literature, we find that „those are such animals which have been or may become subject to hunting, and live freely in the nature“.²

The game protection statuses are: permanently protected game species, and game species protected by close season. Permanently protected game species (unhunted game species) are protected by permanent prohibition of hunting. Game species protected by close season (hunted game species) are protected by prohibition of hunting in certain periods (close season). Close season does not apply to artificially-bred small game on polygons for game hunting³. The Minister of Agriculture and the Minister in charge of environmental protection proclaim by agreement the game species protected by close season, duration of hunting season for game species protected by close season in open and fenced hunting grounds, fenced parts of hunting grounds and polygons for game hunting, as well as the measures towards protection and regulation of the density of populations of permanently protected and particular species, density of populations and obligations from internationally verified contracts.

A beneficiary of hunting grounds may be a legal person that fulfills the conditions for implementation of hunting management in compliance with the provisions of law.⁴ The beneficiary of hunting grounds may be a legal person founded as a public company, company, or another form of enterprise, as well as a hunting association founded and acting in compliance with law.

A beneficiary of hunting grounds may be a legal person that is not registered for professional activities in hunting grounds management and/or gamekeeping activities, provided that it had signed a contract on performance of professional activities in hunting grounds management and/or gamekeeping activities with a legal person registered to perform such activities before submission of application for acquisition of the right to manage hunting grounds.

The period of hunting grounds management is 10 years, unless otherwise stipulated by law.

Exceptionally, a beneficiary of special purpose hunting grounds may give on lease the hunting grounds to a legal person in the territory of the Republic of Serbia which fulfills the stipulated conditions only with the Ministry's consent, and in the territory of the autonomous province with the consent of the competent provincial authority.

Legal Sources of Damage Compensation

The issue of liability for damages caused by protected game is regulated by the Law on Game and Hunting and By-Law on Measures Towards Prevention of Damage to Game and Procedure and Method of Damage Assessment, whereas for some specific damages implying game, the Law on Contract and Torts is applicable.

Subject of Liability

Pursuant to the provisions of Article 88 para 2 of the Law on Protection of Game and Hunting, any damage to hunting grounds caused by protected game shall be compensated by the land user, and pursuant to para 3, any damage caused by permanently protected game shall be compensated by the ministry in charge of environmental protection.

Any damage caused by a wolf in the territory where it is protected by close season, shall be compensated by the Ministry, provided that the hunting grounds beneficiary and the indemnity holder have undertaken the envisaged measures towards prevention of damages.

Any damage inflicted outside the hunting grounds by game protected by close season shall be compensated by the Ministry, and in the territory of the autonomous province, by the competent provincial authority, provided that the owner or beneficiary of the grounds has undertaken the stipulated measures towards damage prevention.

Criterion of Liability

Legal theory and judicial practice treat wild animals (game) as dangerous objects – objects dangerous because of their inherent traits, because their reactions and behaviour can never be predicted by humans and their behaviour is

¹ Počuča Milan: Compensation of Non-Pecuniary Damages from Suffered Fear, op.cit. p. 58.

² Dragoljub Petrovič, Liability for Damages Caused by Animals, Pravni život No. 10/1996, p. 603.

³ Refer to Article 20 of the 2010 Law on Game and Hunting of Serbia

⁴ Article 38 para 1 of the Law on Game and Hunting of Serbia

not subject to the will of their holder. Their nature, since they are living organisms, enables them to cause damage by a willful, reflex or instinctive movement and actions. Some of them, e.g. does, are calm and harmless when still, but that is not the case when they find themselves in an active position – e.g. a sudden leap or run, when they may become the only and sole cause of damage. Any damage caused by a wild animal (game) to a property or human body is subject to objective liability. The same shall apply in case of hunting damage, i.e. the damage inflicted by wild animals to agricultural and forest cultures. The entity liable for this kind of damage shall be the organisation which manages the hunting grounds (hunting grounds beneficiary), based on irrefutable assumption that the game permanently live and reproduce at the hunting grounds subject to the damage.

Assumptions for Damage Compensation

The assumption required for consideration of damage compensation is that the damage exists. However, this assumption in itself is not enough for indemnification of the indemnity holder. The indemnity holder needs to claim damages (the principle of disposition). This concerns damages originating from game, which may be inflicted by game to humans or property on land, water and forests where the hunting grounds are located, as well as in areas beyond the hunting grounds where the game live. Such damages are of diverse contents and depend on specific kind of game. A deer may cause damage by walking over crops, grazing; a hare by partial or complete stripping of bark from trees and main branches; a wild boar may root a vegetable plot; a bear may slay or injure cattle; a pheasant may damage a windshield while a vehicle moves through the hunting grounds. These damages, whether inflicted to people or property on land, may be extensive. This imposes the need for the indemnity holder to be well aware of the procedure and method of collection of the said damages.

Given the specific nature of the compensation, for the indemnity holder it is of crucial importance to know, first of all, the time frame allowed for submission of claim. Pursuant to Article 89 para 1 of the Law on Game and Hunting, a legal or physical person to whom the game inflicted damage may submit a claim for damages to the hunting grounds beneficiary within 10 days from the date of damage. The time frame is defined in days. It starts running on the first day after the event from which the period is counted, and ends with expiry of the last day.⁵ If the latter falls on a day proclaimed by law as a non-working day, the last day of the period shall be the following day. The 10-day period is preclusive in its nature. If the indemnity holder misses the deadline, the hunting ground beneficiary is not obliged to consider the submitted claim for damages. This applies even in case of the indemnity holder's unawareness or omission. The preclusive period has no interruptions or suspensions, so that such circumstances may not be beneficial for the indemnity holder.

We may find that the objective 10-day period is too short and not tailored for the indemnity holder's benefit, because its shortness disables the indemnity holder to collect damages. In our opinion, a better solution would be to introduce a subjective time frame as well, wherein the time would run from day of awareness of inflicted damage, even if such period would be a short one. The way the time frame for submission of claims for hunting damages is defined by the Law on Game and Hunting, it would impose the obligation for the owner or user to check daily, or at ten-day periods, the status of their property. This requirement is unrealistic and too harsh. An owner or user may possess several plots in a village area, where he/she grows crops, fruit or vegetables. The legislator failed to take care of such land owner's or user's material losses suffered due to „regular checking of the status of property”.

The law fails to define closely the contents of a claim for damages. It should preferably specify the time and the kind of game that inflicted damage to the indemnity holder, with description and amount of such damage, if the indemnity holder finds it possible. The indemnity holder's estimate and specification of the kind of game that inflicted damage is not binding for the hunting grounds beneficiary, as these would be determined by the procedure and in the manner as regulated by the By-Law on Measures Towards Prevention of Damage Inflicted by Game from 2012.

The quoted law in paragraph 2 of Article 89 insists that the indemnity holder should support the claim for damages with adequate documentation proving the occurrence of game-inflicted damage. The law does not specify precisely the documents which prove the damage occurrence. It may certainly be minutes of damage assessment prepared on the indemnity holder's request by a professional at the hunting grounds beneficiary's (e.g. gamekeeper), photographs, witness statements, etc.

Procedure for Damage Assessment and Collection

The hunting grounds beneficiary is obliged to decide on the claim within 30 days, following the procedure as per the By-Law. Pursuant to Article 8 of the By-Law, the damage inflicted by game is identified through the procedure where the beneficiary of hunting grounds where the damage was inflicted by game forms without delay, no later than within 24 hours from reception of claim for damages, a three-member expert committee for assessment of the cause of damage and estimate of the damage value. The committee shall without delay, no later than within 12 hours before the planned beginning of investigation, inform the claimant and the hunting inspector about the time and

⁵ Refer to Article 77 para 1 of the Law of Contract and Torts.

place of investigation. Three different decisions may be possible: to adopt fully, to adopt partly or to reject (not adopt fully). The first two decisions constitute an agreement (settlement). The third Committee's decision gives the indemnity holder the right and opportunity to collect damages through a lawsuit, by submission of claim at the competent court. This can be done until the claim becomes past the limitation period. It can be done after that as well, while waiting for the hunting grounds beneficiary to raise the objection of limitation. Only then, if the court rules the objection sustained, the court shall waive the claim as unfounded. It needs to be highlighted that this objection is of a substantive legal nature, because the court does not take care of claim limitation period *ex officio*. When the law says that an indemnity holder may submit a claim before the court of jurisdiction, it implies local and actual jurisdiction. The court of local jurisdiction would be the one at the seat of the hunting grounds beneficiary. Actual jurisdiction may be that of an ordinary court of law or a commercial court, depending on who are the subjects in the contractual relation of damage compensation. Please note that the indemnity holder's is expected to address the hunting grounds beneficiary towards amicable settlement, as a procedural requirement which is taken care by court *ex officio*. If the claimant fails to use the opportunity for amicable settlement, or the claimant fails to submit evidence thereof, the court shall dismiss the claim without consideration of the crux of the matter. Thence the indemnity holder shall lose the case on procedural grounds.

Article 87 of the Law on Game and Hunting concerns the measures towards prevention of damages. „The beneficiary of hunting grounds, the owner and user of the land, water and forest where the hunting grounds are located, as well as the owner and user of areas beyond the hunting grounds where the game is found, are obliged to undertake all the necessary measures towards prevention of damage which may be inflicted by game to humans and property.”

Pursuant to the provisions of Article 88 of the Law on Game and Hunting, the indemnity holder (legal or physical person) who suffered game-inflicted damages is entitled to damage compensation only if having undertaken the stipulated measures towards prevention of game-inflicted damages. This is a substantive legal requirement on which the indemnity holder's right to damage compensation depends. Otherwise, the indemnity holder (owner of land and cattle or land user, if found in the position of the indemnity holder), may lose the right to damage compensation. The law does not specify any such measures, but has left it to be regulated by a subordinate act. Pursuant to Article 89 para 4, and Article 91 para 3 of the Law on Game and Hunting, the Minister of Agriculture, Trade and Forestry has passed the By-Law on the Measures Towards Prevention of Damage Inflicted by Game and the Procedure and Method of Damage Assessment.

Pursuant to Article 4, paragraph 1, of the said By-Law, the property owner or user, towards prevention of damage caused by game, regularly checks the status of his/her property and organises its protection and safeguarding in compliance with the law which regulates hunting, and the provisions of this by-law, namely: 1) protection of vegetable patches, nursery-gardens, orchards, plantation crops and vineyards in a manner which prevents trespassing of hairy game; 2) selection of plant cultures that he/she sows or seeds in the natural environment surrounding the agricultural land that he/she cultivates, in a manner which avoids or mitigates possible risks of damage caused by game; 3) removal of crops and fruits from areas in the hunting grounds or in the immediate vicinity of hunting grounds within agrotechnical deadline; 4) use of mechanical and chemical agents (repellents) which repel game from crops, plants and saplings in a manner as defined by manufacturer's instructions; 5) tying dogs next to crops; 6) use of visible scarecrows, light and sound devices; 7) controlled burning of materials that produce smoke and gases which repel game; 8) mounting of electric fences (electric shepherds); 9) use of mechanical means for individual protection of fruit trees and other plants (aluminium foil, metal strips, plastic bands, plastic foil, plastic or paper sacks, shrubs, corn stalks and other materials); 10) watching over farm animals with permanent presence of a shepherd or watchdogs; 11) closing farm animals at night in pens constructed in a manner which disables entrance of any kind of game which causes, or may cause, damage to farm animals; 12) implementation of any other protective measures.

According to the said measures, it may be considered that the property owner and user must protect his/her property against game by undertaking sufficient and adequate measures. Which measures are sufficient and adequate is to be solved as a factual matter on case to case basis, and the estimate depends on actual circumstances of a specific damage event. Circumstances in a specific case may indicate that the indemnity holder is partly responsible for the game-inflicted damage. In that case, there is room to apply Article 192 of the Law of Contract and Torts, as the damage liability shall be shared, and the court shall decide on the extent to which the indemnity holder participates in his/her damage, expressed it in percentages.

We find that the said measures are stipulated by the law only *exempli causa* (as an example), and that the owner and user may protect the property by other means as well.

If the indemnity holder fails to protect his/her property by appropriate measures, he/she shall be found guilty and the cause of damage shall be his omission and his guilt shall exclude the liability of the hunting grounds management company.

Since the Law on Game and Hunting has been in effect for a short time, and there are no published court rulings on the issue, we shall use several earlier court rulings, for illustration purposes.

“In one case, deer destroyed only the plants which were not painted with protective chemical agent „Arcotal”. On the basis of the fact that out of 3,000 plants, 247 pieces, which were not painted, were destroyed, the court decided that the claimant’s omission was the legally relevant cause of inflicted damage. It is completely certain that the damage would not have been inflicted if the claimant had painted all plants with „Arcotal”.⁶

In the second case, it was found that, by mounting a one meter high fence, the land owner had undertaken the required and reasonable measures towards prevention of game entrance to the orchard, with reasoning: „It is true that the orchard owner should undertake, depending on the circumstances, appropriate and adequate measures towards prevention of such damage caused by (game). In this particular case, the indemnity holder had done so, thus there is no reason to believe that he himself has contributed to the damage occurrence. By mounting a more than 1 meter high fence around his orchard, the claimant had undertaken the reasonable and required measures towards prevention of game entrance to the orchard, and in substantive legal terms, there are no grounds for obligation to remove snow, snow drifts, and certainly not beyond that which belongs to the claimant as the actual legal user.”⁷

In the third case, damages were claimed for one sheep and two young bulls, killed by a bear in a claimant’s stable. The opinion was expressed that damage compensation may be claimed only for damages inflicted in open land, in the open. If that is not the case, then the indemnity holder has no right to claim damages. It is clear why the legislator has thus stipulated. Cattle grazing in the open is impossible to be protected and safeguarded, whereas an indoor space may be well protected and safeguarded, and if someone fails to do so, then it is his own fault.⁸ In this case, the damage was inflicted in the indoor stable of the claimant, adjacent to his house, and not in the open.

In the fourth case, while assessing the required protective measures against wild boar damage on a plot covered by corn, the courts assessed: „that the claimant and her husband had undertaken all necessary protective measures on the plot, namely putting up fire, turning on the lights, setting scarecrows and a battery-operated electric shepherd.”⁹

Liability for Damages during Hunting

Article 90 paragraph 1 of the Law on Game and Hunting regulates the issue of compensation of damages inflicted during hunting. Pursuant to the said provision, the hunting grounds beneficiary bears joint liability with the participant in hunting who causes damage during a hunting event organised by the hunting grounds beneficiary.

By introduction of joint liability for damages inflicted during hunting, the legislator placed the indemnity holder in a better position, which we find completely correct and logical. Accordingly, in case of damage during hunting, the indemnity holder has two debtors. He/she may claim damages from the hunting grounds beneficiary and from the participant in hunting, severally or from both of them at the same time.

Damages during hunting are such real life situations when a hunting grounds beneficiary organises hunting, and a participant in hunting causes damage. A hunter in an organised hunting event often fires without noticing a person working in the hunting region (felling trees, trimming shrubs, collecting mushrooms, etc.) and hits such person or hits the gamekeeper or another participant in the hunting. Liability for such damages is assessed based on objective liability, and the participant may also be found culpable (certain degree of negligence).

As regards the hunting grounds beneficiary, he manages the hunting grounds and acts as the organiser of hunting. There are situations when the hunting grounds beneficiary organises hunting for foreign nationals, sent to the hunting grounds beneficiary as foreign hunters pursuant to a contract. This would raise the issue of liability of such organisation. With this regard, the prevailing opinion in court practice is: „When foreign nationals hunt for game, the hunt organiser remains the organisation which manages the hunting grounds, and not the organisation which referred the foreign national to the hunting association based on relevant contract, which foreign national wounded the claimant (gamekeeper) at one moment while shooting a deer, which claimant in this lawsuit seeks from the hunting association a compensation of damages suffered due to that event. This liability shall be judged pursuant to Article 174 para 1 of the Law of Contract and Torts, i.e. the principle of objective liability, because the hunting organisation deals with a dangerous activity. It follows that in case of game hunting by foreign nationals, the hunt organiser remains the organisation which manages the hunting grounds, and not the hunting association which referred the foreign national (in this case, it is the defendant) for hunting pursuant to relevant contract. However, the mere entry in already described business relationship with an organisation dealing with a dangerous activity (and hunting is undoubtedly such an activity) does not make the defendant herself a person dealing with a dangerous activity.”¹⁰ The user of hunting grounds, however, shall not be liable whatsoever: „the hunting organisation, which implies a hunting association, shall not be held liable for damages inflicted by guns owned by hunters – otherwise

⁶ High Commercial Court in Zagreb, SI-383/71 dtd. 24 May 1971, PSP 1/972. decision number 310.

⁷ Decision of the Supreme Court of Croatia, Rev-1236/88 dtd. 20 July 1988, PSP 2/988.

⁸ Ruling of the Supreme Court of Bosnia and Herzegovina GŽ-68/52 dtd. 30 July 1952

⁹ For details refer to the ruling of the Supreme Court of Serbia, Rev-3523/98 dated 17 August 1999. Overtaken from A.Radovanov,Zdravko Petrović, Compensation of Damages, Proceedings of Judicial Practice, Faculty of Law of the University Business Academy Novi Sad, 2009, p.51.

¹⁰ Ruling of the Supreme Court of Croatia, Rev-1174/84 dtd. 13 November 1984

members of that association (broken window on the claimant's building) but not during game hunting. Undoubtedly, the defendant's hunters are not his employees, but only his members, and the hunters do not hold the status of a defendant's body as a legal person, and it is them, and not the defendant, that own the guns, meaning that the defendant's liability for actual damage is excluded by provisions of the Law of Contract and Torts (Art. 170 to 174). The defendant's liability for this damage is also excluded pursuant to provisions of the Law on Hunting („Official Gazette of SAPV” No. 11/77 and 17/78), because the hunting organisation, which includes a hunting association, is held liable only for damages inflicted by hunters and their assistants during game hunting, and for the damage to the claimant's window in P., which is not a hunting area and where no hunting activities take place, thus the defendant cannot be held liable for this particular damage even if the hunters, as its members, really inflicted it.”¹¹

In one case, which had its epilogue before the court, while hunting fox with a hunting rifle, the defendant hit the claimants' spouse and father, who died from sustained injuries. The deceased was cutting shrubs in the forest to weave baskets. In such a situation, the courts' attitude is that it concerns so called objective liability for damages, i.e. the defendant's liability regardless of fault. The defendant attempted to be dismissed from his liability by the objection that the deceased is guilty for his own death because he was cutting shrubs in the forest without permission. That circumstance (shrub cutting in the forest without permission from a competent authority) is not decisive for the issue of defendant's liability because it does not concern the behaviour of the deceased which would contribute to the occurrence of damage. In the Supreme Court's opinion, there is no direct causative relation between the inflicted damage and the deceased persons' behaviour (shrub cutting in the forest without permission), because the injurious consequence would take place even if the deceased had possessed a permit for shrub cutting. Accordingly, the defendant cannot be dismissed from liability (the court of first instance determined guilt on the part of the defendant) for the inflicted damage, because he acted with insufficient care when shooting foxes.¹²

In some situations, in order to improve the effects of hunting, it organises a battue, engaging its own members or third persons. The battue activity is not risk-free. Beaters often move on rugged, slippery and rocky terrain, they fall down and get hurt. A beater may be hit by a gun shot. As a consequence, they suffer damage to property and other. The hunt beneficiary is held liable for such damages according to the principle of objective liability.

Hunting Grounds Beneficiary's Liability for Damages Caused by Game in Collision with a Motor Vehicle

The issue of liability for damages to property and humans caused by game in case of collision with a motor vehicle on a public road is not particularly regulated by the Law on Protection of Game and Hunting, therefore such damages may be considered subject to the said law. A public road, according to the said law, is not considered hunting grounds. In practice, it is assumed that even in such a situation there is certain liability of the organisation which manages the hunting grounds, but applying general rules of liability, i.e. applying the Law of Contract and Torts, by the principles of objective liability, because the beneficiary of game, as live and dangerous objects, has the obligation to undertake appropriate measures towards prevention of game exiting to a public road. The beneficiary of hunting grounds, according to his job description, is aware of the areas where game might emerge on roads, thus he is obliged to report accordingly to the Road Maintenance Company, in order to exhibit at such places an adequate warning sign, e.g. „game on the road”. With that regard, this company may also make omissions in road maintenance. In such a case, under certain circumstances, the road beneficiary may be held jointly liable. With that respect, the reasoning of a court ruling states „When there is a public road nearby hunting grounds, and the protected game inflicts damage on this road to third persons, then the organisation managing the hunting grounds and the road beneficiary bear joint liability, provided that the organisation managing the hunting grounds has advised the road beneficiary to undertake the stipulated measures towards prevention of damage caused by game in compliance with Article 73 para 1 and 2 of the Law on Hunting. In lawsuits, the hunting grounds beneficiary seeks to be dismissed from liability by stating the fact that he had requested from the road organisation to exhibit the sign „game on the road” at the appropriate place, right at the point of damage event, but the latter has turned a deaf ear to this obligation, which makes the road organisation solely liable. The same court gave the following reasoning: „This assertion was not adopted by the Supreme Court because the road organisation does not have the capacity of the third person, since it is bound by legal regulations to maintain the roads entrusted to it, including mounting of required traffic signs, therefore, it could be only co-liable for compensation of damages to the claimant, if the non-existence of the traffic sign „game on the road” were in a causative relationship with the occurrence of accident and damage. In that case, the association and the road organisation would be jointly liable for damage compensation to the claimant. By the way, it should be mentioned that mounting of such a traffic sign cannot eliminate traffic accidents, but only maybe mitigate them”¹³

¹¹ Ruling of Supreme Court in Novi Sad Gž 2010/87 dtd. 19 November 1987. Overtaken, A.Radovanov, Proceedings of Judicial Practice of the Courts in the Autonomous Province of Vojvodina, „Official Gazette” Belgrade, 2008, p.

¹² Ruling of the Supreme Court of Croatia, Gž-1702/69 dtd. 20 May 1970

¹³ Decision of the Supreme Court of Vojvodina, Rev-10/80. Overtaken A.Radovanov. Proceedings of Judicial Practice, Civil Law Domain, Business Academy Novi Sad, 2009, p.99.

The organisation may be dismissed from its (objective) liability (partly or fully) only if the damage was caused by the indemnity holder's or a third person's fault. The beneficiary is not obliged to compensate damages caused by a doe's clashing against a motor vehicle in motion on the road, if ascertained that the damage was caused by sole fault of the motorist, because he/she did not adjust the speed to the road and traffic conditions. „According to the state of facts, assessed during the proceedings, the claimant suffered damage from clashing of a doe against his/her vehicle while driving. The accident took place on the road. The weather was cloudy, the road straight, clearly visible and wet because of heavy rain. The left and right side of the road were clearly visible, and there were no shrubs or other vegetation. On each side of the road, there was a wide shoulder, and behind the shoulder a channel with mown grass. At a little more than 8 kilometers before the point of accident, there was a traffic sign „game on the road for next 9 km”, placed on a visible spot. The claimant saw this traffic sign. He was driving at 80 km/h, and he noticed the doe, according to expert's findings, when he was 0.80 m away from it, measured from the left pavement edge to the right in the direction of the vehicle motion. The claimant could have avoided the contact between the vehicle and the doe had he noticed the doe at the distance larger than 14 meters, driving at the speed of 80 km/h, or had he been driving at the speed of 50.49 km an hour. The contact between the doe and the vehicle was made within psycho-technical reaction of the claimant, because the claimant did not brake at all, and undertook the measures towards deceleration only after the collision with the doe. The doe which clashed against the claimant's vehicle was not a sudden obstacle for the claimant, given the existing warning sign. As the claimant failed to adjust the speed of vehicle motion to the road and traffic conditions in terms of Article 45 of the Law on Road Traffic Safety, and Article 60 of the Law on Hunting of the SAP Vojvodina, the defendant – hunting association is not liable to compensate damages to the claimant.

The Supreme Court accepts this legal opinion of courts expressed in the disputed ruling. In fact, the claimant may succeed in the claim for damages if he proves, in terms of Article 154 of the Law of Contract and Torts, that the defendant is responsible for compensation of damages suffered by the claimant. However, it was determined in the proceedings that the damage took place by sole fault of the claimant himself who, in terms of Article 45 of the Law on Road Traffic Safety, failed to adjust the speed of vehicle to the road conditions, failed to pay attention to the existing traffic sign „game on the road for next 9 km“ – which was the cause of contact between the doe and the vehicle and of the damage.¹⁴

Conclusion

In practice, there are frequent cases of damage inflicted by some of the protected game species (mammals and birds) to legal or physical persons, in hunting grounds and beyond, so the injured party's claim damages, most often from the hunting grounds beneficiary. Collection of damages shows certain specific features, such as the short time frame for submission of claims. It is the so called preclusion period. This actually means that failure to submit a claim for damages within legally defined time frame annuls the indemnity holder's right to compensation. This results from lack of knowledge about the legal provisions on protection of game and hunting, which partly regulate the issue of damage compensation. That fact puts the indemnity holder in a situation where the damage, which may be of larger extent, cannot be successfully collected. In addition to the fact that the time frame allowed for submission of claim for damages from game is too short (10 days), and that it runs from the day of damage event, the indemnity holder has to identify the game which inflicted the damage, and the regime of protection to which the animal which caused damage on property or body of the injured belongs, because that determines who is to be addressed with the claim for damages – the hunting grounds beneficiary or the social-political community, i.e. the Ministry which proclaimed permanent prohibition of hunting. Therefore: if the damage is inflicted by game which is subject to permanent prohibition of hunting, the damage is to be compensated by the competent Ministry of the Republic of Serbia, because its agency proclaimed that permanent prohibition of hunting. If the damage is inflicted by an animal protected by close season, the damage may be claimed from the hunting grounds beneficiary. The hunting grounds beneficiary may be organised as a public company, company, or another form of enterprise, as well as a hunting association or another association founded and acting in compliance with law. The hunting grounds beneficiary may also be a legal entity which is not registered for professional activities in management and/or gamekeeping activities with a legal entity registered for such activities before submission of application for the right of hunting grounds management. This may be an obstacle for the indemnity holder when submitting a claim, because the period for submission of claim for damages may expire while searching for the subject of liability.

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¹⁴ Decision of the Supreme Court of Serbia, Rev-163/92 dtd. 26 February 1992. PSP 1/992.

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