

VOJTĚCH VOMÁČKA* – JOSEF BARTŮ**

Damage Caused by Game and its Compensation in Central European Countries: A Comparative Perspective

- **ABSTRACT:** *This article provides a general comparison of the rules on compensation for damage caused by game in Germany, Austria, Poland, the Czech Republic, Slovakia, and Hungary. It focuses on both the scope and assessment of liability and the existence of a complementary compensation scheme for damage caused by protected species. The authors conclude that the national systems share common features but also differ in many areas. Most notably, Polish law divides the responsibility between the hunting ground user and the State, while taking into account how game numbers can be regulated (according to the hunting season). Hungarian law addresses the specific liability directly by the Civil Code, and Slovak legislation, which seems optimal, establishes the breach of a legal obligation as a prerequisite for the establishment of a compensation claim.*
- **KEYWORDS:** agriculture, hunting, game regulation, liability, compensation for damage

1. Introduction

This article focuses on the legal regulation of compensation for damage caused by game in Central European countries: Germany, Austria, Poland, the Czech Republic, Slovakia, and Hungary. It provides a general comparison, which could be helpful for agricultural entrepreneurs and, in particular, persons affected by damage caused by game. In addition, the issues of damages are of interest in terms

* Dr. Iur, Ph.D., LL.M., Assistant Professor, Faculty of Law, Masaryk University, Brno, the Czech Republic; Legal Advisor in environmental matters, Supreme Administrative Court of the Czech Republic, vojtech.vomacka@law.muni.cz.

** Mgr., Assistant of judge, Supreme Court of the Czech Republic; Assistant and Ph.D. candidate, Faculty of Law, Masaryk University, Brno, the Czech Republic, josef.bartu@gmail.com.



of the development and reflection of the private law traditions and considerations on liability (*Haftung*) that some states share, and thus may serve as an interpretive tool. Unfortunately, comparative literature on the subject is scarce, aged,¹ or limited in scope.² Perhaps the most comprehensive work on the topic was published after this article was submitted: A 2022 book in Hungarian by J. Barta³ et al. focuses on a wider context of the relationship between game damage, damage caused by huntable animals, and game management from an international perspective. Besides the Austrian, German, and Hungarian regulations covered by this article, it also provides valuable insight into the regulation of hunting in Romania, the United Kingdom, and Finland.

In all the countries compared in this article, game has no master except in rare cases (in Hungary, game is the property of the State). Therefore, as a rule, there is no responsible owner to pay for damage caused by game, and the specific rules apply.

The specific rules on liability are applicable as *lex specialis* to the general framework of civil liability. A notable exception is the Hungarian Civil Code, which expressly addresses liability for damage caused by a huntable animal (see below). Instead of a direct reference, the applicability of specific legislation has usually been confirmed and elaborated upon by case law.⁴ For clarity, this article avoids some specific sub-issues covered by different legal acts outside hunting law, usually the civil code. One such example is the rules on the precise determination of damages.

At the same time, the definition of game in national law is usually not restricted to the species allowed for hunting. The liability regime in hunting law is thus applicable to a relatively large number of species that continue to be classified as game but are protected, most of them for many years.

It must be emphasized that the specific rules on compensation for damage caused by game are not restricted to hunting law. Instead, they are often multi-level and, in addition to hunting, cover agriculture and the protection of protected (endangered) species. The State generally provides compensation in these areas for damage caused by selected species, some of which are also game within the meaning of hunting laws. Such compensation does not always stem from liability *strictu sensu* since the damage is not attributable (in its entirety) to the State. In principle, it meets the criteria for state aid and is subject to specific requirements in terms of Article 107(3)(c) of the Treaty on the Functioning of the European Union,

1 See De Klemm, 1999.

2 The parts of this article focusing on German, Austrian and Czech law build on elements from Bartů, 2021.

3 Barta, 2022.

4 As regards Germany, for example, see Judgement of the Federal Court of Germany (BGH) of 4 November 2010, No. III ZR 45/10 (NJW, 2011, 852), or Metzger, 2021, § 29 Rn. 4; for Austria, see Judgement of the Austrian Constitutional Court of 28 September 1988, No. VfGH 118261/1988; for Czechia see Judgements of the Czech Supreme Court of 24 March 2015, No. 25 Cdo 3335/2013, of 30 May 2017, No. 25 Cdo 3683/2015, or Petr et al 2019/209; for Slovakia, see Resolution of the Slovak Supreme Court of 13 May 2014, No. 5 MCdo 53/2012.

which concern the definition of eligible costs and the condition of a minimum contribution by the beneficiaries in the form of reasonable precautionary measures.⁵ Similar rules apply to the compensation of costs of protective measures in protected areas of the Natura 2000 network.⁶ Member States can provide state aid to cover up to 100 % of the cost of any investment needed to prevent damage caused by protected animals, such as wolves. The maximum aid to compensate for damages (both direct and indirect) by protected animals has also been increased to 100 %.⁷ The state aid scheme is secondary to the authors but deserves to be briefly mentioned to illustrate the functioning of the compensation system as a whole.

2. Purpose of the specific rules on compensation

The specific rules on compensation for damage caused by game in all the countries compared share similarities. Surprisingly, in most countries, not much attention is paid to the purpose of this legislation. It seems that the rules on compensation are considered a way to balance the conflict of interest between two areas of the economy: hunting and agriculture. On the one hand, they are intended to compensate for the legal disadvantage of the landowner or usufructuary due to the loss of the power of disposal over his property. On the other hand, they seek to compensate for the legal disadvantage of the owner due to his lack of defense against game animals.⁸

German literature and decision-making are perhaps the most advanced. It contemplates that the purpose of the specific, strict liability regime in hunting law is not a liability for endangerment (*Gefährungshaftung*) but a claim for compensation (*Ausgleichsanspruch*)⁹ because wild animals in the forest do not pose an increased danger.¹⁰ Therefore, liability for damage caused by wild animals is a special case of liability for damage caused by animals.¹¹ Liability for damages is

5 See in particular Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1. 7. 2014, pp. 1–75).

6 See Judgement of the CJEU of 27 January 2022, *Sătiși-S* (C-238/20, ECLI:EU:C:2022:57).

7 See European Union Guidelines for state aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 204, 1. 7. 2014, pp. 1–97). Furthermore, the rural development programs, under the EU Common Agricultural Policy, can support, if Member States so choose, the costs for effective preventive measures that help eliminate or reduce the risk of damage from large carnivores.

8 See, to this extent, Judgement of the Supreme Court of Poland of 27 November 2007, No. III CZP 67/2007.

9 Metzger, 2021, § 29 Rn. 3.

10 Wagner, 2020, § 835 BGB, Rn. 15.

11 In contrast to Section 833 BGB, it is not damage caused by a domestic, utilitarian, or so-called luxury animal, but by a wild animal.

justified by the reasoning that the owner of the land is not in a position to prevent damage by wild animals and must therefore tolerate it. This has no influence on the numbers of game. On the other hand, a person entitled to hunt can prevent damage by appropriate means such as hunting or feeding. The attribution of liability for damage is similar to the civil law concept of self-sacrifice (*Aufopferungsgedanken*).¹² Wagner concludes that all those who have been prevented from hunting should have the standing to claim damages.¹³

In other countries, there is a similar consensus that liability for damages offsets the public interest in a healthy game population against prohibiting landowners from hunting game. However, the more in-depth explanation and corresponding discussion on the meaning and purpose of the liability regime in hunting law is somewhat limited. This can lead to a simple rejection or constant undermining of the intention of the legislation.¹⁴ In Czechia, for example, the hunters argue it is 'against common sense that someone should pay for damages caused by something they do not own.'¹⁵ Often, it is only a specific aspect of the liability regime that is subject to criticism, particularly its strictness.¹⁶

3. The German rules are based on absolute strict liability

The German rules on liability for damages caused by game are provided by the Federal Hunting Act (the 'Federal Hunting Act' or 'BJagdG')¹⁷ with effect from April 1, 1953.¹⁸ Under Section 29(1) of the BJagdG, the hunting association is liable for damage caused by the cloven-hoofed game,¹⁹ wild rabbits, or pheasants²⁰ on land belonging to or allocated to a common hunting ground within the meaning of Section 8 of the BJagdG (*gemeinschaftliche Jagdbezirken*), irrespective of fault.²¹ Damage caused on land that is not part of the hunting ground or on land within the meaning of Section 6 of the BJagdG (*befriedete Bezirken*), which is part of the

12 Judgement of the Federal Court of Germany (BGH) of 4 March 2010, No. III ZR 233/09.

13 Wagner 2020 § 835 BGB, Rn. 15.

14 Krejčí 2015 8.

15 Textl 2020 26.

16 For example, in the Ruling of 13 December 2006, No. Pl. ÚS 34/03, the Czech Constitutional Court justified the existence of the specific liability regime by limiting the property rights of the owner of the hunting land. On the other hand, the Court indicated that by establishing absolute strict liability, the legislator went further than was strictly necessary from the point of view of the constitutionality of such legislation

17 Bundesjagdgesetz in der Fassung der Bekanntmachung, September 29, 1976 (BGBl. I S. 2849).

18 Section 46 of BJagdG.

19 Pursuant to Art. 2(3) of the BJagdG, cloven-hoofed game includes bison, elk, red, fallow, sika, roe deer, chamois, roe, mouflon, and wild boar.

20 Pursuant to Section 29(4) of the BJagdG, the Länder may provide that the obligation to compensate for damage also applies to damage caused by other game.

21 Wagner 2020 § 835 BGB, Rn. 9.

hunting ground but may not be used for hunting, shall not be compensated for. The landowner has the right to compensation, and the hunting community has passive standing. In practice, however, the hunting ground's proletarian often takes over in the lease agreement, which also has effects *vis-à-vis* third parties.²² If liability is only partially assumed, the hunting community must compensate for the remaining damage.

The legal regime for compensation for damage to land within private hunting grounds according to Section 7 of the BJagdG (*Eigenjagdbezirke*) differs depending on whether the damaged land is attached to the hunting ground²³ or belongs to a private hunting ground.²⁴ In the first case, the owner, the person benefiting from the hunting ground (*Nutznießer*), or the tenant has passive standing in the dispute if he has contractually assumed liability. In the case of a partial takeover, the owner or person benefiting from the hunting ground is liable to the remaining extent. In the latter case, the contractual arrangement between the injured party and the person entitled to hunt shall prevail. If there is no such agreement, the person entitled to hunt shall be liable for the damage caused by insufficient shooting. Liability under Section 29(3) of the BJagdG is based on fault, which is sufficient in the form of negligence.²⁵

For a claim for compensation to arise, the legally relevant damage²⁶ must be caused by game animals specified in Section 2(3) of the BJagdG on land on which hunting is permitted. The natural behavior of game animals must cause damage. For example, damage caused to fields intended to attract game to avoid valuable crops and trees is not covered.²⁷ Damage to farms that do not fall within the protective scope of the legislation on compensation for damage caused by game (e.g., damage to health) is also not compensated for.²⁸ Damage caused by a collision between an animal and a means of transport is also not covered.²⁹ However, this does not preclude liability under Section 823 of the German Civil Code (BGB).

Besides the hunting law legislation, all federal states use state aid programs for compensation of damages caused by various species, either long-term or *ad hoc*.³⁰ In particular, wolf management plans that provide compensation for damage caused to livestock farmers have been introduced following the return of wolves to the German countryside. Usually, a minimum standard of measures protecting

22 Section 29(1) third sentence of BJagdG; Wagner 2020 § 835 BGB, Rn. 9.

23 Section 29(2) of BJagdG.

24 Section 29(3) of BJagdG.

25 Metzger, 2021, § 29 BJagdG, Rn. 8.

26 Cf. Sections 31 and 32 of the BJagdG.

27 Metzger, 2021, § 29 Rn. 2.

28 Wagner, 2020, § 835 BGB, Rn. 11.

29 Spindler, 2021, § 835 BGB, Rn. 2.

30 See for example the Decision of the European Commission on Lower Saxony: Granting of aid to compensate for harvest losses caused by Nordic visiting birds to arable land. 28. February 2019, C(2019) 1782 final.

animals vulnerable to wolf attacks is required. Furthermore, the private ‘Wolf Compensation Fund’ enables livestock owners to be compensated in a quick and unbureaucratic way for any damage caused by wolves.

4. The Austrian regulation is classified on the borderline between strict liability and encroachment liability

The main characteristics of the Austrian regulation of damage caused by game lie in the shared competence between the federal government and individual provinces in the field of forestry. The fundamental competence in this field belongs to the federal government,³¹ but since the compensation for damage caused by game falls within the area of civil law,³² the individual states (*Bundesländer*) are expected to enact precise regulations. As a result, several subsystems of Austrian law can be recognized, some of which are more comprehensive than others. To fill the gaps in the specific regulation, the general legal principles of the Austrian Civil Code (ABGB) are used.

All Austrian provincial hunting laws provide for strict liability of persons authorized to hunt (*Jagdausübungsberechtigte*, JAB).³³ In the Austrian doctrine, liability for damage caused by game is classified on the borderline between strict liability and encroachment liability,³⁴ because the law provides for a no-fault obligation to pay damages of the JAB, although reasons outside of hunting also cause game damage. The Austrian Supreme Court notes that

only in this way otherwise occurring difficult problems of proof can be avoided since every damage caused by the game gradually is to be regarded as (new) primary damage. In particular, this applies if the lack of the annually occurring natural regeneration of a tree population is claimed as damage caused by game.³⁵

This no-fault liability of the JAB does not apply to the injured party if it fails to take protective measures that an ordinary farmer or forester would have taken or has removed these precautions taken by the JAB. This exemption from liability can be

31 Art. 10(1)10 of the Bundes-Verfassungsgesetz (B-VG): ‘Bergwesen; Forstwesen einschließlich des Triftwesens; Wasserrecht...’

32 See Judgement of the Austrian Constitutional Court of 16 December 1987, No. VfSlg 11591/1987.

33 See for example Judgement of the Austrian Supreme Administrative Court (VwGH) of 24 March 2015, No. VwSlg 19080 A/2015: ‘The liability of the person authorized to hunt for damage caused by hunting and game, as stipulated in the Krnt JagdG 2000, is in principle – with the exception of damage to real estate on which hunting is rested – designed to be strict.’

34 Koziol, 2018, Rz 99 ff.

35 Judgement of the Austrian Supreme Court (OGH) of 6 October 2000, No. 10b119/00g.

found in all provincial hunting laws, except for Vienna, Burgenland, and Styria.³⁶ Specific rules usually allow for amicable settlement of damage. For example, in Upper Austria, if an amicable agreement cannot be reached with the person authorized to hunt, the aggrieved party shall file his claim for damages with the chairman of the Hunting and Game Damage Commission (*Jagd- und Wildschadenskommission*) within two weeks of the expiry of the period stipulated in Section § 73 of the Upper Austrian Hunting Act (No. 32/1964).

The scope of compensation differs among federal states: Damage caused by game is defined in hunting laws as damage caused by game to land, agricultural and forestry crops, and to products not yet harvested. In the hunting laws of Styria, Salzburg, Lower Austria, Vienna, and Burgenland, the liability of JAB is generally excluded for damage that has occurred on land on which hunting is rested. In Upper Austria, Lower Austria, Salzburg, Tyrol, Vienna, Burgenland, Carinthia, and Styria, all damage caused by the animal species specified in the Hunting Act or in various annexes must be compensated. In Vorarlberg, only the damage caused by the cloven-hoofed game to vegetation and the damage caused by hares and badgers to crops are compensated.³⁷

There are other differences. For example, compensation for damage to domestic animals is provided entirely only in Carinthia. It is regulated in three other hunting laws (Salzburg, Tyrol, and Vorarlberg), but with clear restrictions. Thus, in Vorarlberg, damage to domestic animals is not compensated in the case of damage caused by game, but only in the case of damage caused by hunting. In Tyrol, the obligation to compensate for damage caused by game to domestic animals—as in Tyrol for damage caused by game in general—only covers damage caused by huntable animals that are not subject to year-round protection. Finally, in Salzburg, the hunting owner is not obliged to pay compensation for damage to domestic animals caused by predators or birds that are protected throughout the year; rather, the province, as the holder of private rights, can pay compensation.³⁸

To our knowledge, there is no specific legislation for compensation regarding protected species in Austria outside the above-mentioned hunting law. Bodies involved in such compensation are therefore insurance companies. The liability for damage is assessed according to the general rules. Therefore, it is important for hunting companies to have insurance coverage, presumably liability insurance. The hunters' associations cover the premiums paid to insurance companies that provide compensation for wild animal damage. The main objective of the hunters' insurance is to cover damage resulting from hunting accidents, such as injuries and destruction of property. The compensation for wild animal damage (mainly

36 Secklehner, 2018, p. 15.

37 Secklehner, 2018, p. 12.

38 See Judgement of the Austrian Supreme Administrative Court (VwGH) of 24 March 2015, No. VwSlg 19080 A/2015.

lynx and bear) constitutes only a tiny part of the insurance fund.³⁹ Furthermore, the World Wildlife Fund (WWF) contributed to compensation payments from 1989 to 1997 in Lower Austria and from 1994 to 1997 in Upper Austria.⁴⁰

5. The Czech concept is based on the German regulation

The conditions for incurring liability for damage under Czech law are similar to those under German law, particularly in the case of joint hunting grounds. This does not mean that the Czech Hunting Act (Act No. 449/2001 Coll.) blindly follows the German one; its foundations go far back into the past.⁴¹ However, it has undoubtedly developed under German influence.

According to Section 52(1)(b) of the Hunting Act, the hunting ground user is obliged to pay for damage caused by game in the hunting ground to hunting land or field crops not yet harvested, vines, fruit crops, or forestry. The law defines the responsible party as the hunting ground user, which, according to Section 2(n) of the Hunting Act, is the hunting ground holder if he uses the hunting ground himself or a person to whom the hunting ground holder has leased the hunting ground. According to Section 2(m) of the Hunting Act, the holder of a hunting ground means a person to whom the hunting ground has been recognized by a decision of the state hunting administration authority. The establishment of passive *in rem* is required by law by the fact that wildlife is considered a thing of destruction.⁴² Otherwise, there would be no entity from which the injured party could claim compensation. The owner of the damaged land and the lessee or tenant of the land may be a person with active legal standing.⁴³

The user of the hunting ground is not liable for any damages, but only for damages caused by game on listed properties. The Hunting Act defines game in Section 2(b) of the Hunting Act as a renewable natural resource represented by populations of wildlife species listed in Section 2(c) and (d) of the Hunting Act, which lists specific animals. Hunting land is negatively defined by the Hunting Act as land not designated as non-hunting land in Section 2(e) of the Hunting Act. Hunting land may be declared non-hunting land by a decision of

39 European Commission. Compensation for Damage Caused by Bears and Wolves in the European Union. 1999, pp. 22. 92-828-4278-9.

40 Ibid.

41 The legal regulation of compensation for damage caused by game in the Czech legal system can be described as traditional. It was already contained in Act No. 49 of June 1, 1866, Government Decree No. 127/1941 Coll. of the Government of the Protectorate of Bohemia and Moravia on hunting, Act No. 225/1947 Coll. on hunting, Act No. 23/1962 Coll. on hunting. See Petr et al. 2015 XVIII-XIX.

42 Bělovský, 2021, p. 259; Ruling of the Czech Constitutional Court of 13 December 2006, No. Pl. ÚS 34/03.

43 Judgement of the Czech Supreme Court of 26 November 2020, No. 25 Cdo 3967/2019.

the state hunting administration authority in accordance with Section 17(2) of the Hunting Act.

The Hunting Act makes the liability for damage of the hunting ground user conditional only on the occurrence of legally relevant damage (cf. Section 54 of the Hunting Act) caused by game on listed crops. This is a case of absolute objective liability. No fault is required, and the liable party has no possibility of liberation; that is, it cannot exempt itself from the obligation to compensate for damage.⁴⁴ The wording of the explanatory memorandum, according to which

[t]he proposed legislation abandons, in the case of damage caused by game, the hitherto unbearable liability of the user of the hunting ground for the result and adopts, in essence, the general liability for fault, in that the actions or omissions of the user of the hunting ground are found to be the cause of the damage caused,⁴⁵ cannot change that.

The failure of the injured party to comply with the duty of prevention⁴⁶ is sometimes incorrectly cited as a liberating ground.⁴⁷ However, it is the victim's participation in the damage caused.⁴⁸ There is no causal link between the legally relevant event (the effect of the game on the listed crops) and damage; therefore, one of the essential prerequisites for the creation of the obligation to compensate for damage is missing.⁴⁹ In the event of a liberalization ground, the pest does not incur any obligation to compensate for the damage suffered. Although the victim's participation in the damage may also lead to zero compensation, the victim typically has to pay part of the damage.

Damage caused by the European beaver, river otter, European elk, brown bear, lynx, and wolf is covered by Act No. 115/2000 Coll., on the provision of compensation for damage caused by selected specially protected animals, as amended. Damage to the life or health of a natural person caused by these selected specially protected animals; damage to designated domesticated animals and dogs used to guard them; damage to fish, beehives, and beekeeping equipment; damage to unharvested field crops or permanent crops; and damage to enclosed buildings or movable property therein are covered. In addition, damage caused by cormorants is covered by the same Act, but only temporarily until 2023, and is limited to damage to fish. In all cases, compensation is provided by the State.

44 Judgement of the Czech Supreme Court of 28 August 2014, No. 25 Cdo 972/2012.

45 Explanatory memorandum to Act No. 449/2001 Coll.

46 Section 53 of the Hunting Act.

47 Petr et al., 2015, p. 211 or Ondrýšek, 2017, p. 28.

48 Section 2918 of the Czech Civil Code.

49 See for example Judgement of the Czech Supreme Court of 10 July 2020, No. 25 Cdo 3287/2019.

6. Slovak legislation requires a breach of a legal obligation to give rise to liability

While drafting the rules on liability for damage caused by game in 2009, the Slovak legislator decided to follow Czechoslovak legal heritage and preserve the objective liability of the hunting ground user and its absolute character. In addition, however, it made the incurrance of liability conditional on the breach of a legal obligation, which must be causally connected with the occurrence of relevant damage.⁵⁰

The content of the hunting ground user's obligations, therefore, determines the scope of liability for damage caused by game. Pursuant to Section 69(1) of the Hunting Act, hunting ground users are liable for damage caused by improper use of the hunting ground. Improper use of the hunting ground is considered to be hunting management, which is contrary to Section 26(1)(a), (c), (d), (f), (h), (i), (l), and (m) of the Hunting Act. Section 69(2) of the Hunting Act further stipulates that the hunting ground user is obliged to compensate for damage caused by improper use of the hunting ground on hunting land or on field crops not yet harvested, vines, or forest crops.

According to Section 26(1) of the Hunting Act, hunting ground users are obliged to ensure year-round care and protection of the game and hunting ground. The purpose, *inter alia*, is to manage the hunting area in such a way as to achieve and maintain the standard number of game animals, to construct and remove hunting equipment (high seats), to feed game, and to survey game numbers. The case law suggests that the breach of the hunting ground user's obligations most frequently concerns issues in area management and feeding, which result in an overpopulated or underfed game that subsequently causes agricultural damage, particularly in winter, or nibbles trees.⁵¹

Furthermore, the hunting ground user often fails to fulfil a specific requirement under Section 21(1)l) to agree in a written contract with the user of the hunting land the manner and form of minimizing the damage caused by and to game. Such an obligation may, at first sight, appear unfair to the user of the hunting ground, and the Slovak courts have held that if the parties do not agree on the content of the contract, they cannot claim compensation for damages resulting from the breach of this obligation.⁵² We find this interpretation problematic, to say the least. This could lead to the submission of draft contracts that would be unacceptable. Furthermore, it does not motivate the parties to prevent damage in

50 Cf. Section 69(7) of the Slovak Hunting Act; Act No 274/2009 Coll., on Hunting and on Amendment of Certain Acts.

51 See Resolution of the Regional Court in Banská Bystrica of 16 December 2014, No. 13 Co 1075/2013.

52 Judgment of the District Court in Liptovský Mikuláš of 27 June 2019, No. 6 C 20/2018.

the first place because the proposal to conclude an agreement after the damage has occurred is not legally relevant.⁵³ The courts should, therefore, first assess the content of the contract submitted for drafting. If it is unreasonable, the situation should be treated as if no proposal had been made. If it were an acceptable proposal, the application of joint liability for the damage⁵⁴ would be more appropriate and motivate the parties to conclude an agreement.

Similar to the Czech legislation, in Slovakia, the damage must occur on hunting land or on field crops not yet harvested, vines, or forest crops. However, the interpretation of this condition seems troublesome in practice. Teleological interpretation must lead to the conclusion that the phrase 'on hunting land' means 'there must be damage to the hunting land,' for example, by the area being plowed up. Nevertheless, Slovak courts interpret the phrase as the location where the damage occurs. *In concreto*, they dismissed the claim of applicants who suffered damage caused by a collision between their car and wild animals, given that the damage did not occur on hunting land.⁵⁵ Indeed, it would be absurd to consider that if the plaintiffs were driving through a meadow hunting land and hit a pig or deer, they would be entitled to compensation.

Slovak regulation of compensation for damage caused by selected, specially protected species of animals is provided by the Nature and Landscape Protection Act.⁵⁶ State aid covers damage caused by water beavers, river otters, great cormorants, mooses, mountain bisons, brown bears, wolves, and lynx.⁵⁷ Except for cormorants, all the above animals are game animals.

Damage caused to the health and life of persons, field crops, tree and forest crops, domesticated animals and dogs, beehives and apiaries, and game in selected areas is covered under defined conditions. In particular, compensation may be provided based on an inspection carried out by the nature protection authority, and only if adequate precautions have been taken.⁵⁸

7. Hungarian law interestingly combines specific rules in the Civil Code and other legal acts

In Hungary, liability for damage caused by a huntable animal is regulated by the Civil Code (Act No. V of 2013) and the Hunting Act (Act No. LV of 1996, on the Protection of Wild Game, Game Management and Hunting).

53 Judgment of the District Court in Revúca of 23 October 2015, No. 8 Cd 5/2015.

54 Article 441 of the Slovak Civil Code.

55 Judgment of the Bratislava II District Court of 9 October 2018, No. 11 C 394/2015; Judgment of the Trnava District Court of 19 November 2014, No. 13 C 341/2013.

56 Sections 97–102 of Act No. 543/2002 Coll.

57 See Decree No. 24/2003 Coll., implementing the Act on the Protection of Nature and Landscape.

58 Sections 98(1) and 101(1) of the Nature and Landscape Protection Act.

The somewhat minimalistic regulation provided by Section 563 of the Civil Code (Liability for damage caused by a huntable animal) deviates interestingly from the typical regulation in other countries. It was introduced in 2013 and states that

(1) The person entitled to hunt is liable for compensation for damage caused by a huntable animal. The owner of the animal on whose hunting ground the damage occurred shall be liable. If the damage is not caused on hunting grounds, the person liable for the damage shall be the hunting right holder from whose hunting ground the game was taken. (2) The hunting right holder shall be exempted from liability if he proves that the damage was caused by an unavoidable cause beyond his control. (3) A claim for compensation shall be barred after three years.

The Civil Code seems to opt for objective liability even though it is subject to debate among legal scholars since the regulation is still relatively new.⁵⁹ The regulation does not contain any reference to the extent of the damage, nor is the meaning of control specified. Therefore, we may assume that the scope of the control required by the hunting right holder is determined by his legal duties, combined with what is foreseeable with due care. However, such determination covers a broad scope of responsibility. In particular, the Hunting Act requires the hunting right holder to protect and ensure the long-term maintenance of game and its habitat. Furthermore, hunting rights must be exercised in a professional way. At the same time, and similar to regulations in other countries, game management is limited by legal acts on forest management (in Hungary, Act No. XXXVII of 2009, on Forests, Forest Protection, and Forest Management), protection of nature and welfare (in Hungary, Act No. LIII of 1996, on Protection of Nature, and Act No. XXVIII of 1998, on Animal Protection).

After the introduction of specific liability in the Civil Code, the Hunting Act was amended in 2015 accordingly⁶⁰ to limit the liability considerably. Section 75/A of the Hunting Act now states that the holder of the hunting right is liable for damage caused by a huntable animal under the rules of the Civil Code to compensate for damage caused to others outside agriculture and forestry, with the proviso that a cause outside the control of the holder of the right to hunt shall be deemed to be a cause outside the exercise of the right to hunt and the pursuit of the hunting activity. In such cases and liability for an activity involving increased risk, the rules of the Civil Code on dangerous establishments apply.⁶¹

⁵⁹ On the nature and scope of civil liability, see Fézer, 2019 or Fuglinszky, 2015.

⁶⁰ See Döme, 2016.

⁶¹ Civil Code. Article 6:539 of the Hungarian Civil Code provides that '(1) If dangerous establishments cause damage to each other, the operators shall compensate the other in

Combined, it seems that the Civil Code applies to a) damages caused by all huntable animals in agriculture and forestry other than the game species listed in Section 75(1) of the Hunting Act (deer, fallow deer, roe deer, wild boar, mouflon, wild hare, and pheasant); b) damages caused by hares and pheasants in agriculture and forestry, except damage to vineyards, orchards, arable land, afforestation, and nurseries; and c) all damages caused by all huntable animals outside agriculture and forestry. This means that it is important to distinguish both the character of the damage and which animal caused it. For example, in the case of a collision between a huntable animal and a motor vehicle, the substantive legal basis for the assessment of liability for damage would be the rules of Section 539 of the Civil Code on dangerous establishments. The courts would consider whether preventive measures were taken, particularly whether road signs were properly installed.⁶²

Regarding rules on compensation for damage caused by protected species, Section 74 of the Act on Protection of Nature divides the risk and obligations between the Directorate and the owner or user of the property. They are both obliged to introduce measures for the prevention or reduction of damage. However, the Directorate is required to use its competence when the owner or user is not able to prevent the damage. It is also obliged to pay compensation if damage caused by protected species occurs because of its inaction to comply with a justified request for adoption of preventive measures or because it granted consent to the use of alarming methods or the capture or thinning out of overpopulated species.

8. Polish law divides compensation between the hunters and the State

Polish law recognizes several types of damage caused by wild animals:⁶³

1. Hunting damage caused by wild boar, deer, roe deer, fallow deer, and elk (until 2001) paid by lessees and managers of hunting districts.
2. Damage caused by game species with a year-round protection period (since 2001, elk has been such a species) or the above-mentioned game species

proportion to their fault. If the operator is not the actual tortfeasor, the operator shall be liable to pay compensation for the damage in proportion to the fault of the actual tortfeasor. (2) If the damage is not attributable to either party, the person liable to pay compensation for the damage is the person whose activity involving an increased risk resulted in the anomaly which led to the damage. (3) If the damage caused to each other is attributable to an anomaly in the activities of both parties involving an increased risk, or if no such anomaly can be established in the case of either party, each party shall bear its own damage, in the absence of fault on its part. (4) The provisions of this section shall also apply to the relationship between operators where several dangerous establishments jointly cause damage, with the proviso that, in the absence of fault or faultlessness, the damage shall be borne in equal shares.'

⁶² See Prencsook, 2019.

⁶³ Zalewski, Markuszewski and Wójcik, 2020, p. 9.

outside hunting districts, that is, in areas excluded from hunting districts. The estimation of these damages is carried out by the Marshal Offices, and compensation is paid by the State Treasury.

3. Damage caused by animals under species protection, that is, beavers, bison, bears, wolves, and lynxes, paid by the state treasury.
4. Damage caused by both animals under species protection and game species for which no one pays compensation. These species currently include cranes, wild geese (both game and under-protected), and cormorants.

Polish regulation of hunting damage is included in the Hunting Law Act from 1995 (Ustawa z dnia 13 października 1995 r. Prawo łowieckie) and in the Regulation of the Minister of the Environment on the detailed conditions for assessing damage to crops and agricultural produce from 2019.⁶⁴

According to Section 46 of the Hunting Law Act, the lessee or manager of the hunting district shall be obliged to compensate for damage caused: 1) to crops and crops by wild boars, elk, deer, fallow deer, and roe deer; and 2) while hunting. Estimation of such damage, as well as determination of the amount of compensation, is performed by a team consisting of 1) a representative of the Voivodship Agricultural Advisory Centre (przedstawiciel wojewódzkiego ośrodka doradztwa rolniczego), 2) a representative of the lessee or manager of the hunting district, and 3) the owner or holder of the agricultural land on which the damage occurs. The Hunting Law Act also provides detailed rules on the application for compensation⁶⁵ and inspection, which should precisely establish the damage.⁶⁶

The procedure for claiming compensation begins with determining whether the damage caused to crops by game animals occurred in the hunting district. Pursuant to Section 23(1) of the Hunting Law Act, a hunting district is defined as an area of land with a continuous area enclosed by its borders, not smaller than three thousand hectares, in which there are conditions for hunting. In Section 24, the districts are divided into forest hunting grounds (forest land accounts for at least 40 % of the total area) and field-hunting districts (forest land accounts for less than 40 % of the total area). Section 26 specifies areas excluded from hunting districts, such as national parks and nature reserves (except for reserves or their parts, where hunting has not been prohibited); municipalities within the boundaries of residential and farm buildings; buildings; plants and devices; and areas intended for social, religious, industrial, commercial, storage, transport, and other economic purposes as well as historic and special objects within their fences.

64 Rozporządzenie Ministra Środowiska z dnia 16 kwietnia 2019 r. w sprawie szczegółowych warunków szacowania szkód w uprawach i płodach rolnych. (Dz.U. z 2019 r., poz. 776).

65 Section 46(3)–(8) of Hunting Law Act.

66 Section 46a of Hunting Law Act.

The lessee or manager of the hunting district is obliged to compensate for damage to crops caused by wild boars, red deer, fallow deer, and roe deer. According to Article 48 of the Hunting Law, compensation is not due to: 1) persons who have been allocated land owned by the State Treasury as agricultural depots on forest land; 2) the owners of damaged crops or crops who did not remove them within 14 days from the end of harvesting period of this species of plants in a given region, specified by the provincial assembly by way of a resolution; 3) to the owners of damaged crops or crops, who did not agree to the construction of facilities or performance of treatments to prevent damage by the lessee or manager of the hunting district; 4) for damage not exceeding the value of 100 kg of rye per 1 hectare of crop; 5) for damage to crops deposited in heaps, piles, and mounds, in the immediate vicinity of a forest; 6) for damage to crops established with gross violation of agrotechnical principles; 7) for damage referred to in Article 46 paragraph 1 that occurred on properties in relation to which the owner or perpetual usufructuary has made a declaration of prohibition of hunting, referred to in Article 27b paragraph 1—until the day following the day a) on which the declaration of the ban on hunting was withdrawn or b) on which the authority responsible for the lease of the hunting district or the minister responsible for the environment or the lessee or manager of the hunting district became aware of the expiration of the hunting prohibition, or c) notification of the withdrawal of the declaration of the ban on hunting to the authority responsible for the leasing of the hunting district or to the minister responsible for the environment.

Pursuant to Article 50 of the Hunting Law, the State Treasury is liable for damages caused by game animals under year-round protection in the following areas: 1) forest hunting districts—compensation is paid by the State Forests National Forest Holding from the state budget funds; 2) hunting districts in the field and areas that are not included in hunting districts—compensation is paid by the voivodship board from the state budget funds.⁶⁷

Regarding compensation for damage caused by legally protected animals, under Article 126 of the Nature Conservation Act,⁶⁸ the State Treasury is liable for damage caused by aurochs, wolves, lynx, bears, and beavers. However, the compensation does not cover lost profit and does not apply to 1) persons to whom land owned by the State Treasury was allocated; 2) injured parties who a) did not build equipment for crops within 14 days from the end of harvesting of this plant species in a given region, and b) did not agree with the directive of the regional director of environmental protection or the director of the national park to build equipment or to carry out damage prevention measures; and 3) damage a) caused to the property of the State Treasury, excluding property given for economical use based on the Polish Civil Code, b) not exceeding the annual value of 100 kg of

⁶⁷ For more details, see Rakoczy, 2016.

⁶⁸ Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody (Dz.U.2021.1098).

rye per hectare of crops, c) to crops established in breach of commonly applied agrotechnical requirements, d) caused by a wolf, bear, or lynx in livestock left without direct care in the period from sunset to sunrise.

In 2013 and 2014, the Polish Constitutional Tribunal concluded that several provisions of the above-mentioned Nature Conservation Act were inconsistent with the constitutional standard because the liability of the State was limited only to specific categories of damage, namely, damage caused by aurochs to crops, crop or forest farms, and by wolves, lynxes, and bears to livestock, as well as damage caused by bears to apiaries and crops. Such regulations lead to unjustified differentiation among owners. However, the Tribunal added that there is no general right to compensation from the Treasury, equal for everyone, since not every damage caused by a protected species is subject to the automatic compensation liability of the State. By adopting flexible principles of nature protection, the legislator attempts to reconcile various reasons and interests while respecting the principles of sustainable development.⁶⁹

9. Conclusion

A basic comparison of the regulation of liability for damage caused by game shows common features but also differences in the approach to this issue among Central European countries. In all countries, compensatory measures present a traditional arrangement, often supplemented by a compensation scheme for damage caused by protected species. The specific provisions in national hunting laws are usually based on the general provisions of the Civil Code; the Hungarian Civil Code directly regulates the basis of this liability.

The concept of compensation for damages varies according to who pays the damages and to whom, but also in aspects of the scope of liability (what damages are covered, for what species of game) and the assessment of the liability (what role is played by fault). From the point of view of the condition of fault, the Slovak legislation appears to be optimal since it establishes the breach of a legal obligation as a prerequisite for establishing a compensation claim. For this reason, it is probably the most consistent with the meaning and purpose of the obligation to compensate for damage. At the same time, however, it may entail difficulties in proving a breach of obligation. Therefore, we believe that the burden of proof should *de lege ferenda* be borne by the liable party rather than the injured party. Strict liability, on the other hand, appears to be rather harsh towards hunting associations. While it is true that the injured party cannot hunt and influence game numbers, even hunting ground users cannot reduce game numbers indefinitely,

69 See Judgement of the Polish Constitutional Tribunal of 21 July 2014, No. K 36/133, and of 3 July 2013, No. P 49/11 (regarding beavers).

and overfeeding may not prevent all damage. Moreover, there is general interest in protecting nature and preserving its diversity. The damage caused can be many times greater than the budget of the hunting ground user. A sophisticated compromise that divides the responsibility between the hunting ground user and the State, while taking into account how game numbers can be regulated (according to the hunting season), is the Polish regulation.

Bibliography

- Barta, J. (ed.) (2022) *A vadkár, a vadászható állat által okozott kár és a vadgazdálkodás összefüggései nemzetközi kitekintéssel*. Budapest: Patrocinium Kiadó.
- Bártů, J. (2021) 'K náhradě škody způsobené zvěří v českém, slovenském a německém právu', *Právní rozhledy*, 29(21), pp. 742–749.
- Bělovský, P. (2021) 'Přivlastnění' in Spáčil, J. et al. (eds.) *Občanský zákoník: komentář. III: Věcná práva (§ 976–1474)*. Prague: C.H. Beck, pp. 255–266.
- De Klemm, C. (1999) *Compensation for Damage Caused by Wild Animals*. Strasbourg: Council of Europe Publishing.
- Döme, A. (2016) 'A vad-gépjármű ütközésből eredő kártérítési ügyek megítélése a bírói gyakorlatban az új Ptk. Tükrében', *Polgári Jog folyóirat*, 2016/12.
- Fézer, T. (ed.) (2019) *A Kártérítési Jog Magyarázata*. Budapest: Wolters Kluwer Kft; <https://doi.org/10.55413/9789632958248>.
- Fuglinszky, Á. (2015) *Kártérítési jog*. Budapest: HVG-ORAC Lap- és könyvkiadó Kft.
- Koziol, H. (2018) *Österreichisches Haftpflichtrecht II 3*. Wien: Jan Sramek Verlag KG.
- Krejčí, M. (2015) 'Alespoň minimální novela zákona o myslivosti je nezbytná', *Myslivost*, 2015/7, pp. 8–11.
- Metzger, E. (2021) '§29 BJagdG' in Erbs, G. et al. (eds.) *Strafrechtliche Nebengesetze mit Straf- und Bußgeldvorschriften des Wirtschafts- und Verwaltungsrechts*. Munich: C.H. Beck, pp. 1–29.
- Ondrýšek, R. (2017) 'Náhrada škody způsobené užíváním honitby zvěří', *Myslivost*, 2017/8, pp. 28–32.
- Petr, B. et al. (eds.) (2015) *Zákon o myslivosti*. Prague: Wolters Kluwer.
- Prencsook, J. (2019) 'Vad által okozott károk: Vad – gépjármű ütközés...gépjármű vezetőknél és vadászoknak...fontos tudnivalók!', *Vadkárinfo* [Online] Available at: <https://vadkarinfo.hu/2019/04/27/vad-altal-okozott-karok-vad-gepjarmu-utkozesegepjarmu-vezetoknek-es-vadaszoknakfontos-tudnivalok/> (Accessed: 15 November 2022).
- Rakoczy, B. (2016) *Odpowiedzialność za Szkody Łowieckie*. Warsaw: Wolters Kluwer.
- Secklehner, M. (2018) *Ersatz von Wildschäden an Forstbeständen*. Johannes Kepler Universität Linz.
- Spindler, G. (2021) '§ 834 BGB' in Hau, H., Poseck, R. (eds.) *BeckOK BGB*. Munich: C.H. Beck, pp. 1187–1188.
- Texl, F. (2020) 'K navrhované novele zákona o myslivosti', *Myslivost*, 2020/6, pp. 26–28.
- Wagner, G. (2020) '§ 835' in: Säcker, F. J. et al. (eds.) *Münchener Kommentar zum Bürgerlichen Gesetzbuch*. Munich: C. H. Beck, pp. 2212–2232.
- Zalewski, D., Markuszewski, B., Wójcik, M. (2020) *Szkody w gospodarce wyrządzone przez dzikie zwierzęta*. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie.