

REPAIRING THE DAMAGE CAUSED TO THE ANIMAL WORLD BY PRACTICING ILLICIT HUNTING

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Abstract

The animal world, as a basic component of the biodiversity of a natural ecosystem, plays an important role in maintaining the ecological balance. The specific place of the animal world as an indispensable part of the natural environment is determined by its dependence on the habitat within the borders of which there is one body or another.

Undoubtedly, practicing illicit hunting seriously undermines the legal regime governing the animal kingdom. In this context, the mechanisms and the procedures for repairing the damage caused to the animal world by practicing it are not well-defined in the domestic legislation, which creates certain ambiguities.

This article aims to clarify certain peculiarities regarding the identification of the prejudice that can be caused by illicit hunting, the object of attention and its methods that generate damages as well as the mechanisms for assessing the harm brought to the wildlife of hunting interest.

Keywords: *illicit hunting, repairing the damage, environmental damage, mechanisms for repairing the damage.*

JEL Classification: [K32]

1. Introduction

The increasing human implication in the natural environmental processes is realized through irrational exploitation, industry and technology development and jeopardizes the existence of life on the earth and of all of what we call environmental values.

The unlimited access to the natural resources that man has excessively exploited over time has contributed to the establishment of an unprecedented

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natural imbalance in which the processes under the form of adverse effects are difficult to understand, to limit, to remediate or even to forecast to identify some measures to improve the situation in which we have found ourselves.

An important and recently discussed compartment is the damage done to the animal kingdom through the illegal hunting, as this occupation becomes more and more attractive, profitable and generating benefits in exchange at relatively low costs.

Under these circumstances, the environmental legislation on the segment that governs the method of evaluation and remediation of the damage that is brought through this way becomes vulnerable and powerless to various forms of attempt on species of hunting interest.

Although, the approaches to this chapter have always been characterized by their simplistic and generalist aspect which has neither shown a special interest for the doctrinaires, but often also nor for those who apply the legislation in the field, as it requires a specific examination considering the importance and the particularity of the category of components concerned in the matter of repair by restoring to the condition prior to the damage.

As a result, we intend to carry out a study on the mentioned subject with the hope and conviction that we will contribute to the consolidation and to the substantiation of new ways and mechanisms applicable to the evaluation and the remediation process of the damage brought to the animal kingdom by practicing illicit hunting to capture their specifics and be able to guarantee the exercitation of the right to a healthy and balanced environment from the ecological point of view.

2. Theoretical aspects

In the context of investigations to be made, primarily, it is necessary to identify all legal combinations that will be repairing the damage to the animal kingdom by illegal hunting activities. Mainly, we come to highlight the existing regulations in this respect, and consequently we will make a brief analysis of the legal framework from enunciation, improvement and adaptation of the content of concepts that define the scope, requirements and current standards which will be able to face any attempts to damage and endanger what might be called environmental values.

We say this because the animal kingdom is an integral element of the environment ensuring ecological balance and operation of all-natural components without which human existence would be impossible.

Speaking about the animal kingdom it is necessary at first to make some conceptual clarifications. In the literature of specialty, the notions of „*fauna*”, „*terrestrial fauna*”, „*aquatic fauna*”, and „*animal kingdom*” are widely used.

The word „*fauna*”¹ expresses the totality of animal species throughout the globe, from a certain region or from a certain geological age, formed by a historical process of evolution.

Animals are „animated” beings. If there is no other specification, by the word animal „*is meant any living non-human animal, including autonomous larval forms and/or capable of reproduction but excluding fetal or embryonic forms*”².

The term „*terrestrial fauna*” meets various groups of terrestrial animals, such as mammals, poultry and wild birds, bees, silkworms, etc. (Lupan, 2009, p.397).

In its turn, the legislation of the Republic of Moldova uses only the term of „*animal kingdom*”, which is the largest systematic category in biology, the totality of some animal species that naturally live on land, water, atmosphere or soil, including unicellular, invertebrates and chordates³.

Thus, the notions of „*terrestrial fauna*” and „*aquatic fauna*” have a narrower meaning, being included in the notion of „animal kingdom” (Gugulan, 2014, p. 221).

*The animal kingdom Law*⁴ sets out the ways of using the animal world, including sports and amateur hunting. According to it, hunting is a legal activity, a method of using the animal kingdom, which consists in finding out destined of acquiring, tracking and in fact the animal’s acquisition in their habitat. Finding people on hunting grounds, including on common access ways with non-firearms, ready-to-use, and other hunting gear, such as hunting dogs and birds or with hunting objects, is equal to hunting.

Hunting being a way of using the animal kingdom as the renewable natural resource, and hunting can only be practiced respecting the principle of „*sustainability*”. The seemingly new concept tends to become generalized due to the adoption and implementation of international conventions and agreements on the environment and the exploitation of wild flora and fauna.

Accordingly, hunting of the species with normal development was limited to the surplus population and the other, which are endangered, only to those individuals that cause damages. The solution would be, that the sampling categories of mentioned copies to be made for the purposes of the action of

¹ The word „fauna” comes from the name „Faun”, which in Roman mythology was the god of plains, mountains and forests and the protector of herds, depicted as a man with horns and goat legs.

² Government Ordinance no. 37/2002 on the protection of animals used for experimental and other scientific purposes (Official Gazette of Romania no. 95 of February 2, 2002), art. 2 (b).

³ Law no. 439 on the animal kingdom of 27.04.1995, Official Gazette of the Republic of Moldova 62-63, art. 2.

⁴ Law no.439 on the animal kingdom of 27.04.1995, Official Gazette of the Republic of Moldova 62-63, art. 23.

nature, that is, by extracting the priority of what it would eliminate anyway (injured copies, ill, degenerate, semi - domestic, etc.).

Such an approach to hunting can effectively contribute to preserving the biodiversity of hunting species, due to the interest of local hunters - socially motivated but long-term - to leave future generations a strong hunting fund.

This view was set out as a principle in Resolution No.882 on the Importance of Hunting for Rural Regions of Europe, adopted in 1987 by the Parliamentary Assembly of the Council of Europe.

The same principle of sustainable use of renewable natural resources has been formally recognized by the Declaration of the Principles of the International Union for the Conservation of Nature, adopted at the World Congress in Amman in 2000.

Being expressed and acknowledged, the principle of sustainable hunting exploitation, which is in fact an international official recognition of the hunter's role plays in maintaining the agro-forest-hunting balance, is to be implemented at national level. Both in legislation and doctrine exhaustively are used the notions of hunting, the right to hunt, the hunting, the fauna of hunting interest, the wild animals that are subject to hunting, species of indigenous fauna of hunting interest.

It is a matter of priority to make certain clarifications in this respect, so that in the context of this paper there will be no multilateral interpretation of these notions.

It should be noted that not all wild animals form the category of animals which are subject to hunting. Wild animals can be free in their natural environment or can be moved to natural reserves, in hunting farms or hunting complexes. Wild animals of hunting interest, together with their biotypes (environmental conditions in which they live and develop) are the hunting fund.

The animals of hunting interest and the multitude of hunting grounds constitute the unique hunting fund of the Republic of Moldova. The animal kingdom law uses interchangeably the notions of „cynegetic” and „hunting”, which leads us to conclude that they have the same semantic sense. According to the Dictionary of the Romanian language „cynegetic” means hunting, related to hunting. Moreover, in the context of this study referring to hunting, we will also use the term cynegetic.

It is worth mentioning that the category of animals of hunting interest also forms the notion of fauna of hunting interest or cynegetic, since the latter includes other categories of animals in freedom.

„*The game*” is the action of hunting or hunting (in the sense of a finished result of it). In another sense, it involves an animal, a hunted bird; (by restriction) the meat of such an animal or bird.

„*Fauna of cynegetic interest*” would constitute the totality of animal species in the world, from a region, from a geological age of hunting interest. „*Indigenous fauna species of cynegetic interest*” are animals with common traits and features that grow or are produced in their own country for hunting purposes.

In another sense, hunting involves the category of wild animals of cynegetic interest (Lupan, 2009, p. 404).

Moldovan Law on animal kingdom exhibit arbitrarily just terms „*hunting selection*” which means action of extracting the hunting of game sedentary (mammals hoofed) animals degenerate, sick, injured, wounded, with deviations overt behavior, of both sexes and all ages, and the corresponding „sports and amateur hunting” consisting looking, detection and prosecution of the human animal to hunt them for private use. From the content of the above-mentioned law we can deduce that hunting is the purpose of acquiring, tracking and acquisition of the animals in natural conditions.

From a comparative point of view, we will refer to the legislation of other states and to the specialized doctrinal opinions. The hunting and protection law of hunting fund of Romania no.407/2006⁵ expressly states that „*hunting*” consists of the action of hunting, searching, hunting, pursuit, hunting or any other activity having the purpose of capturing the game or killing it, on specimens of the species listed in annexes no. 1 and 2, in a state of freedom on hunting grounds.

It is not a hunting action to capture specimens of species of hunting interest for scientific purposes, followed by the release of these. „Hunting” will form the specimen/species of hunting species obtained by hunting action or the game species include those wildlife of the terrestrial and mammalian group, for which hunting is legally permitted in countries that have signed the Convention for Conservation of Wildlife and Natural Habitats (Bern, 1979).

It is not considered a game the specimen of cynegetic interest species obtained by capture or shot on lands which are not included in the hunting funds as well as those obtained by poaching actions. „*The right to hunt*” in the legislative context cited above is the right person or legal owner of the land that are leased hunting, to benefit directly or indirectly from hunting management, if licensed. Consequently, „hunting” will be a way to acquire ownership of wild animals living in their freedom.

Fauna of cynegetic interest - all the specimens from wild fauna populations listed in the Annexes no. 1 and 2 of 407/2006 Law, existing on the territory of Romania⁶. Fauna hunting is a renewable natural resource, a public good of national and international interest.

⁵ Official Gazette of Romania, December 22, 2006.

⁶ Law 407/2006 on the protection of hunting and hunting. Official Gazette of Romania, December 22, 2006.

The law divides the wildlife into hunters of hunting interest, to whom hunting is permitted (the hunting seasons are set and the amount of compensation for illicit deeds) and respectively hunting mammals and wildlife birds where hunting is prohibited (including the amount of compensation for unlawful acts) (Duțu & Duțu, 2014, p.327-328).

We reiterate that hunting and hunting rights are conceptual categories with different content. The right to hunt is the ability of the natural or legal person to exercise a set of actions related to hunting, capturing the wildlife of cynegetic interest, thereby obtaining the permissive act or as the right in the exercise of which the holder acquires the possession or hunting property obtained from hunting actions.

While hunting has a double meaning: it refers to wild animals (mammals, birds) of cynegetic interest or hunting activity, which includes the actions of catching, killing wild animals of cynegetic interest.

Consequently, *“the hunt constitutes all actions of lurking, searching, haunting, tracking, or any other activity having the purpose of capturing wild animals of hunting interest or killing them in a state of freedom on hunting grounds”*.

3. The scientific research

It would be impossible and unacceptable to initiate the study on the peculiarity of repairing the damage done to the animal kingdom by illegal hunting activity without exposing us to the hunting activity and to the object of attack (the hunting fund consisting of the animal kingdom) all together form the basis of the regulation of the reparation regime, namely the basis of triggering this category of responsibilities after the delimitation of licit illegality in the activity of hunting interest.

Mainly, it is necessary to make certain clarifications as to what constitutes damage caused as a result of illicit hunting, the ways of assessing the amount of the damage caused as well as effective mechanisms for repairing the damage caused thereby.

The damage caused by the illegal hunting activity consists of the injuries to the animal kingdom composed of all the wild animals of hunting interest, although the possibility of prejudicing other categories of resources (forest, aquatic or atmospheric) which naturally constitute habitats of hunting animals of interest.

For example, given the fact that game activity qualifies as illegal when prohibited means, weapons or mechanisms are inevitably used, natural resources other than those of the animal kingdom will also suffer.

However, wild animals of hunting interest cannot be isolated by removing them from the natural circuit, the latter being the habitat, in which they multiply, develop or migrate, generally have their existence.

At the same time, when defining the notion of damage caused by illicit hunting, it is to be considered that, by its nature, it is often limited to injuries caused to environmental factors, where the repercussions on the person and his goods are not very specific, because the hunting animal kingdom belongs exclusively to the public domain.

That is, by killing a deer, there is also no harm to the right of an individual, since it can only be the owner of a domestic animal and not the wild ones that make up the hunting funds.

Consequently, the notion of damage caused by illegal game can only concern the environmental damage and not the damage to the person or property.

Obviously, there may also be some exceptions when, for example, the offense of illicit hunting has been committed on private land, where the holder, in accordance with the rules laid down, maintains hunting household, and the wild animals kept on this land belong to him with property rights.

Otherwise, damage to the resources of the animal kingdom cannot affect the health or property of the person in any way.

In another context, the damage resulting from the illegal practice of hunting is to examine and present the notion attributed to criminal law offense on illegal hunting.

This is required to make the distinction clear legal activity illegal hunting (poaching).

Examining the hunting legislation of the Republic of Moldova we do not find a proper notion of poaching, which can be qualified as a lacuna in the local legislation, although such a notion is identified in the Criminal Code of the Republic of Moldova in *Article 233 „Illegal Hunting”* defined as: „hunting without proper authorization either in the forbidden period or in prohibited places, with unauthorized tools and methods (poaching) or using the service situation if it caused damage exceeding 200 conventional units”⁷.

These two notions (illegal hunting and damage caused by game activity), in fact, become closely related and indicate a sequence of events, the effects of the qualified activity as a crime. It is considered here that the action for compensation for the damage to the animal kingdom, which is exercised following the invocation of the rules on civil liability, may be triggered after the commission of a crime classified as illegal hunting.

We can deduce that environmental damage is an injury to the direct environmental factors with possible repercussions on the health and patrimony of environmental goods owners. In turn, environmental damage caused by illegal hunting activities - consists of harm to wildlife of hunting interest through activities and means prohibited by law.

⁷ Criminal Code of the Republic of Moldova no. 985 of 18.04.2002. Official Gazette no. 72-74 from 14.04.2009. Conventional unit is equal to 50 MDL, approximately about 2.5 Euro.

From the perspective of carrying out a complex study on the phenomenon that is the cause of the damage caused to the animal kingdom by the illicit hunting crime, we first insist on entering some details regarding the object of attention both to the offense which qualifies the illicit hunting and to the environmental damage as well as the actions by which the detrimental act in question is carried out.

As we can see, we opt to express ourselves with the phrase „*harmful action*” instead of „*social danger*”, because this expression would exclude its nature and its resources as an object of attentiveness.

However, according to the explanatory dictionar of the Romanian language, (dexonline.ro) „*social*” means „*created by society, own to society; which is related to the lives of people in society, their relationship to society or to society; which concerns the human society*”.

As stated in the specialized criminal literature, following the Polish example, the Moldovan legislator renounced the notion of social danger in favor of the prejudice.

Therefore, in the literature it is considered that the object of the offense is formed not only from the social relations, but also from the social values protected by the criminal law. In such a conception, social relations are put on the same level as social values and are no longer regarded as distinct realities, social relations being harmed only through social values.

Thus, identical to the damage done to the animal kingdom by the illegal hunting action, the object of the offense with the same title is the wild animals of hunting interest that naturally live on land, in the atmosphere or on the soil and which are part of the state unique hunting fund of the Republic of Moldova.

No material object of the offense can be considered livestock or domesticated or wild animals kept in captivity or semi-captivity for economic, scientific, cultural, educational or aesthetic purposes.

Consequently, the notion of poaching inserted into the criminal law to qualify this act as a crime according to the amount of damage caused is a time imperfect if harmful event will qualify as a crime according to the degree of harm caused not by the size of damage.

Accordingly, we deduce that poaching in the sense of criminal law is considered to be the activity specific to hunting only that it is carried out under conditions of unlawfulness or in violation of hunting rules.

Consequently, the notion of poaching in criminal law to classify this offense as an offense according to the amount of the damage caused is an imperfect rule as long as the prejudicial act will be classified as an offense according to the degree of damage not according to the amount of material damage.

In this respect, we consider that the offense of poaching can be qualified and the detrimental deed irrespective of the amount of damage caused if these

were committed with the use of explosive, dangerous devices and other elements of the environment that are part of the natural ecosystem in which the species from the hunting fund exist.

Perhaps for this reason it is considered that in most of the cases illegal hunting qualifies as a misdemeanor and is punishable under the Contravention Code.

However, the offenses falling below the limit imposed by criminal law are classified as contraventions, and in this respect the Contravention Code provides a much more successful exposure that could underpin the formulation of a concept subsequently incorporated into the content of hunting legislation.

According to the *Article 128 of the Code of Administrative Offenses*⁸, it means hunting without a license, without a hunting license or withholding authorization, hunting and harnessing, hunting in prohibited places and during periods of prohibition, as well as the use of prohibited weapons, tools and methods.

In comparative terms, the Romanian legislature expressly defines the *notion of poaching as the action carried out to obtain the same effects as by the hunting action, without fulfilling the legal conditions for the pursuit of the latter*⁹.

Analyzing the views expressed in the doctrine and the legislative framework, we conclude that poaching is hunting without authorization or by overcoming the hunting rules with the use of prohibited weapons, tools and methods.

Conclusion and Implications

Considering that the hunting wildlife of hunting interest in terms of protection, effective management and avoidance of damage to them, currently engenders heated discussion both at the theoretical level and in the context of applicative approaches, it is necessary to emphasize the intensification of hunting rules with the price of overcoming certain limits and harming interests (pleasures, hobbies) of a cultural or scientific nature.

These rules include managing and preventing the disappearance of species that are aware of their irreversibility in the event of destruction is to increase their effectiveness by avoiding some damage that is quite complicated in evaluation and repair.

The main role of hunting management is to allow for the benefit of society to maximize favorable effects by exploiting the populations of hunted wildlife species in accordance with the specific laws.

⁸ Code no. 218 of 24.10.2008, Published: 16.01.2009 in the Official Gazette of the Republic of Moldova no. 3-6.

⁹ Law 407/2006 on the protection of hunting and hunting. Official Gazette of Romania, December 22, 2006.

This fact implies the necessity to substantiate the management of species of hunting interest on bio-ecological and economic knowledge as thorough and comprehensive as possible.

The fulfillment of such a requirement presupposes from the specialists involved in the management of wildlife the fullest knowledge of the way of life of species of hunting importance and of the relations between the populations of these species and the other elements of the ecosystems to which they belong.

A feature of hunting rules at international level is identified by international conventions and treaties which provide for a series of rules that express an effective outlook and the basis for creating a unique system for the protection of hunters of hunting interest.

An extremely important aspect in the process of exercising the right to reparation of the damage caused to the animal kingdom through the activity of illicit game is the evaluation of the amount of the damage that represents the extent of the repair to be granted.

Besides the complexity of assessing the environmental damage to any resource category, the peculiarities of the damage to the fauna species of hunting interest consist in the impossibility of restoration in nature of the destroyed components, which, in the matter of evaluation, determines the necessity to consider other parameters, costs necessary for restoration of the hunting fund.

The determination of the structural composition of environmental damage and the differentiation of components belonging to environmental damage and those belonging to civil damages is a complex process which, at the time of submitting the claim for compensation, is subject to the following:

- a) In most cases, the damage resulting from pollution consists of unrealized gains.
- b) Not the entire amount of damage immediately emerges, most of the damage is potential.
- c) The „chain” of harmful effects is conditioned by the interdependence of processes within the natural complex.
- d) Most of the damage consists of the expenses incurred in restoring and improving the polluted and damaged objects, but which did not bring the desired effect.

In this sense „the determination of the amount of damage caused by the civil law rules is particularly complicated by the specific nature of the components of the damage, conditioned by the particularities of the economic role and the legal status of the environmental components”.

In addressing this situation, environmental legislation operates with pollution, degradation, deterioration, etc. systems that set the possibility of

integrating the injury calculation system in each case and ensuring the possibility of centralized management of finances for the restoration, renovation, regeneration of environmental objectives which have been affected by polluting activities.

According to the national legal framework on evaluation, we refer here to the Animal Kingdom Act, fixes assessment scales where the material value of a specimen of fauna species destroyed by illegal game activity is equivalent to environmental damage in this way, which, in our opinion, does not correspond to reality. So, when assessing these categories of damage, other costs are not considered, such as:

- the costs necessary to adapt the species replaced to the natural conditions or the natural habitat in which they are introduced;
- the costs necessary for monitoring the development and multiplication of species integrated in the natural environment;
- the expenses related to their transportation, care, as well as the expenses incurred relating to the negative effect on the environmental factors registered in the absence of the canceled copy, etc.

Therefore, when assessing environmental damage by destroying the cynegetic species, it should be considered of a larger range of values to be considered when determining the extent of the repair, which in fact determines the structural composition of the damage thus caused.

To sum required to be noted that regulations in setting rules for hunting are the main link connecting protection rules with providing for sanctioning behaviors alleged that caused injury hunting interest, compensation which becomes quite difficult circumstances specificity posed.

In conclusion, it is necessary to mention that the regulations in the field of establishing hunting rules are the basic link between the norms of protection and those which provide for the sanctioning of the reprehensible conduct that caused hunting damage to the hunting fund, the repair of which becomes quite difficult in the circumstances the specificity it presents.

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