

THE PARTICULARITIES OF THE ASSESSMENT OF THE DAMAGE CAUSED BY THE PRACTICE OF THE ILLEGAL HUNT

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Abstract

Hunting being understood as the final act of business coerced sustainable management of wildlife hunting took place in the last century and will be carried out further in a balanced legal framework regulated by written rules and unwritten rules of behavior hunter responsible and civilized. A key issue in exercising their right to compensation for damage caused by the animal kingdom is the illegal hunting activities that damage assessment amount representing extent of the damages to be awarded.

Besides the complexity of assessing the environmental damages caused to any category of resources, the specific injury caused to fauna species of hunting is the impossibility of restoring nature destroyed components which make it necessary for the assessment and consideration of other parameters, costs for rebuilding hunting.

As a consequence, the author made a thorough study on the characteristics and problems related to the assessment of damages caused by illegal hunting practice.

Key Words: *evaluation, environmental damage, wildlife hunting, illegal hunting*

JEL Classification: [K32]

1. Introduction

An extremely significant aspect in the process of exercising the right to fix the damage caused to the animal kingdom by the illicit hunting activity is that of assessing the size of the damage that represents the extent of the reparation that is to be provided. In addition to the complexity of assessing the ecological damage brought to any category of resources, the particularities of the damages brought to the fauna species of hunting interest consist in the impossibility of restoring in kind the destroyed components that in the matter of evaluation determine the need to consider and other parameters, costs necessary to restore the hunting fund.

Beside to these findings initially, we consider it necessary to consult the opinions expressed in the specialty literature regarding complexity, causes and

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conditions, as well as the particularities of the assessment of the ecological damage in general, and then to refer in particular to the resources of the animal kingdom of hunting interest.

On this line, we will analyze some differentiations of the particularity of the assessment of the environmental damage from the civil one which, in the plane of the damage brought to the hunting fauna of hunting interest, is less addressed considering that the category of animals of the hunting fund are public property of the state and only in very rare cases can arise in the case of a private property regime in order to consider the civil damage suffered only by a private individual.

2. Theoretical aspects

Therefore, as stated, the determination of the structural composition of the ecological damage and the differentiation of the components which belong to the environmental damage and those belonging to the civil damage, is a quite complex process, which at the time of the claim, is subject to the following:

1. In most cases the damages resulting from pollution are outlined in an unrealized gain.
2. Not the entire volume of the caused damage is immediately identified; most of them can only be appreciated in a sustainable period.
3. The “chain” of harmful effects is conditioned by the interdependence link of processes within the natural complex.
4. The vast majority of the caused damages are presented in the expenses in restoring and improving the polluted objects, but which did not bring the desired effect.

In this sense, “determining the amount of the damage caused according to the norms of civil law is particularly complicated because of the specificity of its components, conditioned by the particularities of the economic role and the legal status of the environmental components”. In solving this situation, the legislation on environmental protection operates with the tax systems for pollution, degradation, deterioration, etc., which establish the possibility of unifying the damage calculation system in each case and ensure the possibility of centralized management of finances regarding the restoration, renovation, regeneration of the environmental objectives that were affected by polluting activities.

According to the national legal framework regarding evaluation, we refer here to *the Law of the animal kingdom*¹, establishes evaluation fees (fixed scales), where the material value of one destroyed faunal specimen by illegal hunting activity is equivalent to the damage brought to the environment in this

¹ Law no. 439 on the animal kingdom of 27.04.1995, Official Gazette of the Republic of Moldova 62-63. Annex nr. 6.

way, which in our opinion does not correspond to reality. So, when assessing these categories of damages, it is not taken into account and other costs such as:

- the costs necessary to adapt the replaced species to the natural conditions or the natural habitat in which they are introduced;
- the costs necessary to supervise the development and the propagation of the species integrated in the natural environment;
- the expenses related to their transportation, care, as well as the expenses incurred in connection with the negative effect on the environmental factors recorded in the absence of the destroyed specimen, etc.

Therefore, when assessing the damage brought to the environment by destroying the species of hunting interest, a larger spectrum of values should be taken into account when determining the extent of the repair, which in fact determines the structural composition of the damage caused thereby.

By the structural component of the ecological damage it is necessary to understand those categories of patrimonial damages, which by their nature form the ecological damage, belonging to one of its elements - the civil damage or the environmental damage. In this sense, the specialized literature presents a series of concrete solutions, according to which the ecological damage forms as appropriate (Trofimov, 2006, p. 143):

- caused by environmental elements as well as by the whole plan of its repair, which the administrative authority should make in order to restore the previous environmental situation,
- the reasonable expenses made by the victim in connection with the assessment of the damage,
- the reasonable costs of assessing the impact of the damage on the health of the population and on the state of the environment in general.

In other words, the extent of the damage is equal to the cost of the restoration measures, plus the cost of the damage assessment works and the determination of the restoration measures that have to be taken.

In order to sum up all of these it would be necessary to conclude that the nature of the concrete costs (expenses), which will form the value of the ecological damage, forms a quite varied spectrum. It includes both direct costs (the value of damaged goods, expenses for medical treatment, the cost of restoration work, etc.) and indirect costs (costs for estimating environmental damage, for different forensic expertise, etc.). In this context, as regards direct costs, we do not encounter problems regarding their recognition as components of ecological damage, and then in terms of indirect costs recognition as components of ecological damage, we consider that this issue requires a separate examination and argumentation.

Indirect costs must be part of the environmental damage component, while indirect costs (the costs of assessing the damage, the costs of carrying out the biological, chemical and other expertise, the expenses for the services of the specialist consultants, including in the court process, etc.), they cannot form a component of the ecological damage, although they will necessarily be part of the figure claimed by the one who had to bear from the ecological damage. Obviously, although the expenses necessary for exercising the right to action, which may consist of costs for carrying out the expertise and generally assessing the damage to the hunting fund by evaluating the damage, are borne by the responsible authority, these ultimately fall into the category of trial costs and have not no attribution with the extent of the damage, because the amounts incurred by the one who will lose the trial are not intended to repair the damage but are intended to ensure the judicial process.

3. Scientific research

In other words, when assessing the claims of the injured party against the party which harmed, both the direct and indirect costs incurred by the victim will be taken into account, but the rules and principles of civil liability for ecological damage will not apply to the latter.

Therefore, the indirect costs incurred by the victim in the case of ecological damage will be applied to the general legal regime of compensation, namely those concerning the costs of the proceedings.

Returning to the components of the ecological damage, and in particular of the one brought to the animal kingdom of hunting interest, following the aforementioned ones, we conclude that they form only the direct costs resulting from the pollution act. Here, we recall that the extent of the damage caused by illicit hunting must be established starting from the material value lost by killing hunting animals, but also from other values considered in the ecological aspect, that is, based on the function that they perform in relation to the environment, the expenses necessary to replace them, reintegration into the natural environment from which they were excluded by being killed, but also other expenses that would make possible a complete repair of the damage thus caused.

The only problem that still needs to be solved and which can arise in this regard is whether the expenses of restoring the initial state of the environment and the patrimony of the person from the ecological damage component can be included. The answer is affirmative, starting from the assumption that by prejudice it is necessary to understand “that quantifiable effect of the damages...”, in the sense that not only the suffering or the concrete loss will be qualified as the prejudice, but also the expenses to repair this suffering or loss will form the damage, because they are also the effect of the polluting act.

As a consequence, according to the doctrinal opinion (Trofimov, 2006, p. 144), the ecological damage would have the following structure:

1) *The components of the environmental damage are:*

- the damage caused directly to the natural object (land sector, aquatic object, forestry massif, etc.) by deterioration, quality loss, removal from the natural circuit, etc.,
- the environmental imbalance (changing the numerical ratio of the representatives of animal species, decreasing the volume of oxygen delivered into the atmosphere, etc.),
- the expenses of the environmental factors recovering,
- the amount of compensation in case of inability to repair the damage in a kind.

2) *The components of the civil damage are:*

- the damage caused to the person's patrimony (decrease of the value of the patrimony, including the loss of the goods, deterioration or modification of their qualities, etc.),
- the damage caused to human being (the worsening of the health state, including total or partial loss of work capacity, person's death, etc.),
- the costs of restoring of the initial state of human health, his goods or their value,
- the amount of compensation for losses that cannot be recovered in a kind (the person's death, etc.).

It is worth mentioning that those indicated in the above sections form the type of expenses, they can be materialized in each particular case. Often, the harm done to the animal kingdom is limited to the expenses necessary to restore the habitat destroyed by the illegal activity of hunting, without taking into account certain sufferings of the person viewed individually as long as it cannot invoke personal damage, because the resources of the animal kingdom in almost all cases it is the object of the public property of the state, therefore it is not individualized in relation to the individual. However, there may be some exceptions, when the owner of a forest strip maintains a hunting farm, but also in this case we can talk about captive animals that do not belong to the category of wild animals both from the perspective of the legal regime and from their destination.

So, as mentioned above, one not less important issue regarding the indemnification is the estimation of the ecological damage itself. In particular, this problem concerns the assessment of the environmental damage, because the problem of estimating the civil damage has already found adequate solutions. Today, in the absence of a scientifically argued process, the legislation of different countries calls for various ways of assessing the environmental damages.

The most common cases are the cases in which the estimation of the environmental damages is governed by the rules of estimating the civil damages, namely of those damages that fall under the incidence of the general legal regime for compensation from a crime. We consider this method of evaluation inadmissible, because in such cases the evaluation criteria will be limited only to the consideration of the value of the damage caused to the person, thus excluding the evaluation of the real damages caused to the environment.

The argument in this regard is that the damage caused in any form to the natural environment will eventually spread to the human being, sooner or later, but we consider that the causal relationship is between the deed and the change made to the environmental factors, regardless of whether this change led or not to the prejudice of other people. At the same time, it is natural that not in all cases it is possible to estimate the damage.

An extremely difficult problem, with important meanings for assessing the amount of the harm brought to the animal kingdom, consists in the assessment of the caused damages (Durac, 2016, p. 6). In this context, in the international jurisprudence four main methods have been outlined:

- the reckoning of the replacement value of the fauna and flora elements;
- the assessing of the cost of returning to the previous state of the ecosystems affected by pollution;
- the use of a lump sum assessment;
- the assessing of the cost of compensation by restoring an area of equivalent size, in the vicinity of the polluted area (Duțu M., 2008, p. 124).

As a result, there are two basic ways of redemption and an intermediate one:

a) the monetary assessment of damages is possible for the damages caused to the persons' integrity, private property or civil activities. Moreover, the analysis of international jurisprudence frequently shows that these are the only damages actually redressed².

However, in certain situations, the law must also take into account the damages caused to the goods settled outside the civil law, by “the damages that

² https://en.wikipedia.org/wiki/Amoco_Cadiz_oil_spill (accessed on 9th of March 2020). In 1978, it was estimated to have caused US\$250 million in damage to fisheries and tourist amenities. The French government presented claims totaling 1.9 billion French francs to United States courts (using the 1978 exchange rate and with interest added this came to at least US\$1.6 billion). In 1984, U.S. District Court Judge Frank J. McGarr held that Amoco was liable for damages when he issued his trial verdict, after 3 1/2 years of legal proceedings. Further, the judge ruled that Amoco had put off needed maintenance on the vessel in order to keep it at sea. In 1992, US oil giant Amoco has decided not to appeal against the US court order that it must pay US\$200 million to the French government.

they suffer as a result of the anthropic activities”. In this connection, the international practice has accepted the interpretation of some degradation of the marine environment in the sense of “losses” for fishing or tourism activities.

According to Dr. Ștefan Țarcă, this method (the monetary damage assessment) presents and some disadvantages: it contributes to masking a part of the objective degradation; it confirms that any loss that cannot be agreed in for damages cannot be taken into account (2010, p. 391).

b) the lump sum assessment of a damage represents a number of advantages:

- the simplicity and the low cost of negotiation;
- the predictability and security;
- makes insurance recourse easier;
- and, at the same time it introduces a great rigidity, technical difficulties in the elaboration of the scales.

Some legal systems have instituted this method of assessment by establishing fixed tariffs for situations of destruction of certain categories of species from natural goods or species of wild animals.

*The law on the protection of the environment of the Republic of Moldova*³ expressly sets out the principles and the assessment procedure of the impact on the environment, the strategic environmental assessment and the state ecological expertise. The environmental impact assessment, the strategic environmental assessment and the state ecological expertise are mechanisms for ensuring the environmental protection carried out at the initial planning stages of the activities for:

- a) prior identification of the direct or indirect effects that some public or private projects or some types of planned activity may have on the environment and population health and the correspondence of the characteristics of these activities to the legislation, norms and environmental standards in effect;
- b) preventing and minimizing the impact on the environment and the health of the population by elaborating the measures for environmental protection that must be respected, in the case of carrying out the project, or by prohibiting the start of the planned activities, in case of violation of the environmental requirements;
- c) elaborating and ensuring a clear regulatory framework and applicable in the field of the environment.

According to the *Law on the environmental impact assessment*, the assessment of the impact on the environment is a procedure carried out for

³ Law on the environmental impact assessment of the Republic of Moldova no. 86 of 29.05.2014. Official Gazette of the Republic of Moldova No. 174-177 of 04.07.2014. Art. 3.

evaluating the possible impact of the planned activity on the environment, as well as for elaborating proposals on preventing and minimizing the negative impact or for prohibiting the start of the planned activity. Moreover, the domestic legislation consecrates the anticipated, planned assessment of the damage that will occur in the future, establishing certain criteria for appreciation of the damage that can be brought to the environment.

If the civil damage can be estimated with high accuracy (this will be the difference between the market value of the house in the polluted area and the market value of the housing of the same type in a sector that is not subject to pollution), then the noise pollution assessment will meet great difficulties.

In addition to the evaluation methods set out above, we outline a series of evaluation procedures, from which we could highlight the following:

- judicial evaluation;
- legal lump rate assessment;
- administrative evaluation.

Judicial evaluation is that way of assessing the ecological damage, which is performed by the court based on the circumstances of the polluting case. These circumstances concern the cultural, historical, social, ecological importance of the affected natural objective, the dimensions of the damage, the diminishing of the regeneration capacity in relation to the current situation (e.g.: in the case of the damage caused by the illegal activity of hunting, the fewer representatives of an animal species there are, the lower is their ability to multiply, and thus the harm caused by removing such representatives of the animal kingdom from the natural environment is major). The same opinion is also shared by the Romanian author (Teodoroiu S.M., 2003, p. 134) who argues that in the assessment scales of the damage there is a value attributed to each of the predicted species; the rarer the species or the endangered species are the higher is their value. Although such a process is quite widespread in the judicial practice of different countries, however, we consider that this is not the most appropriate way of evaluation in relation to the “polluter pays” principle, because in such cases it is admitted for one and the same damage to be presented by the court with different conclusions regarding the amount of the damage.

The legal lump rate assessment is used especially for cases where the value of the environmental damage cannot be assessed, or its assessment can be made only in relation to the damage caused to the person’s heritage. This way of assessing the damage caused to environmental factors is also characteristic for the Romanian legislation. Thus, *the Forestry Code of Romania*⁴ provides 15 annexes which reflect the rates for calculating the

⁴ Forestry Code of Romania. Law no. 46/2008 published in the Official Gazette, Part I no. 238/27 March 2008.

amount of compensation for different types of damage caused to the forest resources. This regulatory tactic has been taken over by the *Forestry Code of the Republic of Moldova*⁵, but also by the *Law of the animal kingdom*, where fixed scales are set out in the annexes, which are reference values for the assessment of the categories targeted by the damage and which, in fact, resort to its patrimonialisation.

*The Law no. 205/2004 regarding the animal protection of Romania*⁶ also establishes the tariffs for calculating the amount of recompenses for removing from the natural circuit the different types of representatives of the animal kingdom. In calculating these amounts, are taken into account the age, the economic and ecological importance, the location, the species, etc. If the cause of the damage is found to be so, both for the compensation of the environmental damage, as well as for the qualification of the contravention and criminal cases, the court does not carry out a separate evaluation, but refers only to the legislative acts in force, after which estimates the value of the environmental damage caused.

Such an evaluation method, in our opinion shows a limiting character, it is not taking into account other affected values, costs to be borne in connection with the return to the previous state of the affected environmental components. Moreover, the fixed scales set out in the annexes do not fully cover the expenses necessary to rehabilitate the affected environmental factor and, in fact, do not allow for cost flexibility. For example, in the autonomous community of Austria there are scales for freshwater species (from 100,000 to 500,000 pesetas for a salmon, that is about \$ 5,000), and in Spain, each autonomous community has its own scale (from 2500 pesetas for relatively common, protected species - up to one and a half million pesetas, for endangered species, such as the *bear or lynx*) (Teodoroiu, 2003, p. 134).

Administrative evaluation is a way of assessing the damage based on an administrative decision act and is rarely encountered, because it can only be applied if the law expressly provides for it.

The applicability of this modality is based on the consideration of a simple presumption, resulting from the double presumption of legality and authenticity of the administrative act. The prospect of implementing such a way of realizing the estimation of the goods is quite high, considering that, together with the method of legal lump rate assessment, this ensures the operability of solving the problem regarding the value of the damage.

⁵ Forestry Code of the Republic of Moldova. Approved by Law no. 887 of 21.06.1996. The Official Gazette of the Republic of Moldova, 01.16.1997, no. 4-5.

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

A special way of evaluation, to which we rarely find references, is the *conventional evaluation*, which is most often characteristic to the ecological damages resulting from contracts and to which the contractual civil liability is applied.

Conclusions

In conclusion, we insist on exposing ourselves to the findings made regarding the difficulties of assessing the harm brought to the animal kingdom of hunting interest, which represents a stage that necessarily precedes the action in redressing and which includes a series of particularities that leave this chapter open for discussion at a doctrinal and applicative level.

Thus, a rather accentuated problem currently noticed in the process of assessing the damage brought to the animal kingdom by the illegal hunting activity consists in the rigidity of the reference values determined by the established fixed scales, but also by the aspect of patrimonialisation of the damage, a fact that leaves the other values of an aesthetic or ecological nature in the shadow, quite necessary when considering these categories of damages. However, in addition to the economic benefits of the resources of the animal kingdom, the ecological ones prevail and are much more necessary to maintain the general ecological balance, of all the natural ecosystems, as necessary and indispensable as in their absence the existence of other natural resources, even that of the human species, would be questioned.

Not in vain it is stated in this sense in the specialized literature (Duțu, Duțu, 2015, p. 121) that, by expressing itself through an alteration of the resources outside the market, the ecological damage encountered major difficulties in its evaluation and through it, even in its redressing, in this way. To overcome this deadlock, economic science has proposed the using of a specific market fiction and appropriate methods to assess the damage caused by practicing the illegal hunt.

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