

LEGISLATIVE ASPECTS REGARDING THE PREVENTION AND COMBATING OF BROWN BEAR ATTACKS AND THE RECOVERY OF DAMAGES

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RESEARCH ARTICLE

Abstract

The exponential increase in the number of bears, reported by the mass media and recognized by the authorities, brought up to date the legal regulations regarding liability for the damage caused by animals.

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INTRODUCTION

The exponential increase in the number of bears, reported by the mass media and recognized by the authorities, brought up to date the legal regulations regarding liability for the damage caused by animals.

Anticipating the danger of the emergence of special situations, the legislator made some important changes to the existing normative framework, in the sense of supplementing it with immediate intervention methods to prevent and combat attacks by brown bear specimens on people and their goods, in the urban areas.

MATERIAL AND METHOD

The materials used in writing this paper are composed of normative acts. The methods used are legal, namely the formal method, the comparative method, the logical and the analytical method.

The use of these methods has the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSIONS

The exponential increase in the number of bears, reported by the mass media and recognized by the authorities, brought up to date the legal regulations regarding liability for the damage caused by animals.

Anticipating the danger of the emergence of special situations, the legislator made some important changes to the existing normative framework, in the sense of supplementing it with immediate intervention

methods to prevent and combat attacks by brown bear specimens on people and their goods, in the urban areas.

The liability for the damage caused by animals is part of the tortious civil liability, regulated in Book V, Title II, Chapter IV, Civil Code.

The previously mentioned normative framework is supplemented, in terms of liability for damages caused by wild animals, by Law no. 407/2006¹ on hunting and the protection of the hunting fund and by the Emergency Ordinance 81/2021² regarding the approval of immediate intervention methods to prevent and combat attacks by brown bear specimens on people and their property.

Coming to the aid of those injured, the Romanian legislator has regulated an objective liability, which can be engaged regardless of whether or not there is a fault of the person under whose care the animal is.

Having the marginal name of the notion of guard, art. 1377 Civil Code fully clarifies the scope of the persons whose liability may be engaged.

In concrete terms, the text expressly and explicitly mentions that: "has custody of the animal, the owner or the one who, based on a legal provision or a contract or even just in fact, independently exercises control and supervises the animal and uses it in his own interest".

If in the case of damages caused by domestic animals, the identification of the responsible person is relatively easy, the identification of the responsible persons in the case of wild animals is a more difficult

¹ Official Gazette 944 of 2006.11.22

² Approved by Law 197/2022, M.Of. 677 of 2022.07.06

operation, requiring the identification, reading and understanding of special normative acts.

According to the provisions of art. 13 of Law no. 407/2006³ on hunting and the protection of the hunting fund, in the case of loss and/or damage caused by specimens of fauna species of hunting interest, compensation is granted as follows:

- a. for the damage caused in the hunting funds and in the inner city - by the manager of the hunting fauna on the hunting funds in question, if he has not fulfilled his obligations for the prevention of damage. For the situations in which the manager has fulfilled his obligations, the compensation for the damages
- b. caused by specimens from the hunting fauna species included in annex no. 1 of the law is borne by the central public authority responsible for hunting, through specialized territorial structures. For the situations in which the manager has fulfilled his obligations, the compensations for the damages caused by specimens of the species of hunting fauna contained in annex no. 2 is borne by the central public authority for environmental protection.
- c. for the damages produced in protected natural areas, not included in hunting funds or where hunting is not allowed - by the central public authority for environmental protection, from the budget approved for this purpose.
- d. for the damages caused by traffic accidents in which specimens of fauna species of hunting interest are involved, the compensation is borne by the road administrator, if no "beware of animals" indicators are mounted, or by the driver of the vehicle in the case of the existence of this indicator.
- e. in the case of attacks resulting in the injury/death of a natural person, compensation will be granted to the victim by the central public authority responsible for hunting and/or by the central public authority responsible for the environment

However, the action to recover the prejudice is and must remain only of an accessory/subsidiary character, the main obligation of the authorities remaining to protect the life and physical integrity of the persons and to prevent such attacks.

In order to protect the life and bodily integrity of the person, public health and security, goods of any kind in the public and private property of legal and natural persons, in the conditions of compliance with the conditions for the favorable development of the brown bear, the authorities have the obligation to ensure an optimal balance between the conservation of wild fauna and the protection of the population.

In the above context, becomes relevant the correct and complete interpretation of the provisions of Emergency Ordinance 57/2007⁴ regarding the regime of natural protected areas, the conservation of natural habitats, flora and fauna and the conditions under which derogations are allowed by Order 723/2022⁵ for the approval of the level of of intervention and prevention in the case of the brown bear species (*Ursus arctos*), in the interest of the health and safety of the population and in order to prevent significant damage.

The two previously mentioned normative acts made the national legislation compatible with that of the European Union in the field of nature protection and creation of the institutional framework necessary for implementation.

In concrete terms, Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna species, Council Regulation (EC) no. 348/81 regarding common rules for importing products derived from whales or other cetaceans, Council Regulation (EC) no. 3.254/91 regarding the prohibition of the use of leg traps and the import of furs and products obtained from animals captured by the use of leg traps or other types of traps that do not comply with international standards and Council Regulation (EC) no. 338/97 on the protection of wild flora and fauna species.

The purpose of the existing regulatory framework is to guarantee the conservation and sustainable use of natural heritage, an objective of major public interest and a fundamental component of the national strategy for sustainable development.

For the previously mentioned purpose, the legislator proposed to ensure the express regulation of:

- a) biological diversity, through the conservation of natural habitats, flora and fauna on the territory of Romania

³ Official Gazette 944 of 2006.11.22

⁴ Official Gazette 442 of 2007.06.29

⁵ Official Gazette 350 of 2022.04.08

- b) maintaining or restoring to a state of favorable conservation of natural habitats and species of wild flora and fauna
- c) identifying natural heritage assets that require a special protection regime, for their conservation and sustainable use
- d) categories of natural protected areas, types of natural habitats, species of wild flora and fauna and other assets of the natural heritage that are subject to the special protection, conservation and sustainable use regime
- e) the constitution, organization and development of the national network of protected natural areas, as well as its regime
- f) the administration regime of protected natural areas and the procedures for establishing the protection regime for other natural areas and assets of the natural heritage
- g) measures for the protection and conservation of endangered, vulnerable, endemic and/or rare wild animal and plant species, as well as those for the protection of geomorphological and landscape formations of ecological, scientific, aesthetic, cultural-historical and other nature, natural assets of speleological, paleontological, geological, anthropological interest and other natural assets with natural heritage value, existing in the perimeters of protected natural areas and/or outside them.

For the above purpose, were prohibited both harvesting, capturing, killing, destroying or harming the specimens in their natural environment, in any of the stages of their biological cycle, as well as the intentional disturbance during the period of reproduction, growth, hibernation and migration.

However, the protection of these species had the effect of an exponential increase in animal populations, including the brown bear, which generated the need for new legislative changes.⁶

The changes were necessary in the conditions where, at that time, there was no adequate regulatory framework that would allow immediate intervention in incidents caused by brown bear specimens, with the realization/implementation of the necessary

differences between the intervention measures carried out in the natural habitat of the species, in the unincorporated area of the localities and those necessary in case of emergency, when the bear shows aggressive behavior, enters the inner city and poses a danger to humans.

According to the previously mentioned normative act, in order to ensure specialized services regarding the driving away, relocation or extraction by shooting of bear specimens, the administrative-territorial units can conclude a single contract for the provision of permanence/immediate intervention services for the prevention and combating of attacks by brown bear specimens with a single manager of the hunting fund/funds within the administrative-territorial unit, in compliance with the legislation in the field of public procurement.

In order to ensure specialized services regarding the tranquilization and relocation or extraction by euthanasia of bear specimens, the administrative-territorial unit can conclude a contract for the provision of services with the free-practice veterinarian, in compliance with the legislation in the field of public procurement.

Immediate intervention on bear specimens is carried out gradually through the following methods:

- a) banishment by various means
- b) tranquilizing and relocation
- c) extraction by euthanasia or shooting.

The decision regarding the choice of one of the methods listed above is made by the leader of the intervention team, a team made up of the mayor/deputy mayor of the administrative-territorial unit within the radius of which the event occurred, the personnel of the territorially competent gendarme structures, on duty in the area where it was reported the presence of the bear specimen, the specialized technical staff employed by the manager who concluded a contract for the provision of permanent/immediate intervention services for the prevention and combating of attacks by brown bear specimens with the administrative-territorial unit, the veterinarian. In the event that there is no contract for the provision of permanence/immediate intervention services for the prevention and combating of brown bear attacks concluded between the administrative-territorial unit and the manager or in case the specialized technical staff employed by the manager does not present themselves immediately to the intervention action, the

⁶ Emergency Ordinance 81/2021 regarding the approval of immediate intervention methods for preventing and combating attacks by brown bear specimens on people and their property, as well as for amending and supplementing some normative acts, Official Gazette 732 of 2021.07.26, amended and supplemented by Law 197/2022, M.Of. 677 of 2022.07.06

specialized technical staff of the Forest Guard is part of the intervention team.

The immediate intervention on the bear specimens is carried out gradually, by analyzing the risk level on the spot by the intervention team.

The extraction of the bear by euthanasia or shooting is done in the following situations:

- a) if the interventions by the method of expulsion, respectively of tranquilization and relocation do not give results and the degree of risk changes at a high level, according to the risk assessment procedure
- b) if the safety and security of persons or goods of any kind belonging to them are endangered
- c) if the safety and security of the members of the intervention team are endangered
- d) if the bear in question gets injured during the intervention action and becomes aggressive and no other solutions are identified according to the provisions of this emergency ordinance
- e) if the bear specimen in question is caught in an unauthorized trap, shows injuries and becomes aggressive and no other solutions are identified according to the provisions of this emergency ordinance
- f) if the bear specimen in question presents injuries incompatible with life.

In addition to the institutions already listed, in the field of preventing and combating brown bear attacks, the following are also competent:

- The National Agency for Environmental Protection with responsibilities and attributions in the establishment and management of the national register of expulsions, tranquilizations and relocations or extractions by euthanasia or shooting of bear specimens

- The county agencies for environmental protection, with responsibilities and attributions in collaboration with the administrative-territorial unit within the radius of which the event occurred for the implementation of the intervention monitoring system, the transmission to the National Agency for Environmental Protection of the relevant data in accordance with the requirements of the national register, designation of a contact person regarding the expulsion, tranquilization and relocation or extraction by euthanasia or shooting of bear specimens

- The National Veterinary Sanitary and Food Safety Authority with responsibilities and

attributions in collaboration at the local level with the competent authorities for environmental protection and with the local public administration authorities for the implementation at the local level of the immediate intervention monitoring system and in ensuring the presence at the immediate intervention action of the authorized practicing veterinarian.

CONCLUSIONS

The analyzed legislative changes have multiple relevance.

Through their adoption was ensured the harmonization of the provisions of several normative acts specific to the sanitary-veterinary, hunting fields, as well as the one related to the arms and ammunition regime, for the creation of the legal framework in order to ensure a prompt and effective response in the case of risk situations generated by the attack bear specimens.

A unitary legal framework has been ensured, absolutely necessary for the rapid application of a working method at the national level in the event of an imminent threat to the life or bodily integrity of persons.

With the new legislative changes, the obligation of state institutions to guarantee the constitutional rights of individuals, such as the right to life and bodily integrity and the right to property, have acquired a concrete and effective character.

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