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Legal and procedural framework for wildlife damage compensation in the Republic of Moldova – challenges and mechanisms

Ramy prawne i proceduralne dotyczące odszkodowań za szkody wyrządzone dzikiej przyrodzie w Republice Mołdawii – wyzwania i mechanizmy

Правовые и процедурные рамки касающиеся возмещения вреда, нанесенного дикой природе в Республике Молдова – вызовы и механизмы

Правові та процедурні рамки щодо відшкодування шкоди, завданої дикій природі в Республіці Молдова – виклики та механізми

IGOR TROFIMOV
Professor, PhD, Academy „Ștefan cel Mare" of Ministry of Internal Affairs, Moldova
e-mail: itrofimov@mail.ru, https://orcid.org/0009-0009-1075-5224

EVGHENIA GUGULAN
Assistant professor, PhD, Academy „Stefan cel Mare" of the Ministry of Internal Affairs, Moldova
e-mail: gugulan.eugenia@gmail.com, https://orcid.org/0000-0002-5960-1164

LUMINITA DIACONU
Assistant professor, PhD, Academy of Economic Studies of Moldova
e-mail: lumidiaconu74@gmail.com, https://orcid.org/0000-0002-6736-6344

Abstract: The animal kingdom represents an essential component of ecosystems, and its destruction greatly affects the global natural balance. In the Republic of Moldova, there are animal species protected by law, and the damages caused to them could also have serious consequences on the existing biodiversity balance. The central objective of this thesis is to ascertain the legal and practical ramifications of the process for rectifying harm inflicted upon the animal kingdom within the borders of the Republic of Moldova. This subject matter is distinguished by its unique particularities when juxtaposed with the realm of civil damages. The legal framework governing this domain is characterised by its specificity, precluding the possibility of exoneration for the perpetrator, embracing objective liability principles, and establishing compensation as the sole means of redress. This legislative framework is designed to safeguard biodiversity and ecological equilibrium. The research methodology is applied to compare the legal and procedural framework for repairing damage to animals in Moldova, identify gaps and propose ways to improve legal mechanisms for protecting and compensating ecological damage. This research topic will contribute significantly to effective identification of effective mechanisms in order to prevent acts damaging the animal kingdom.

At the same time in the proposed study the authors will analyse the national regulations on the protection of the animal kingdom, and will also as well as examining the applicability of legislation in the context of procedural reparation of damage caused to the animal kingdom and wildlife components. In this context, we will

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provide a comprehensive set of proposals of *de lege ferenda* in order to optimise and improve the regulatory framework for the reparation of damages caused to the animal kingdom.

Keywords: environmental law, civil law, wildlife damage, procedural law, liability, compensation, biodiversity, ecosystem protection, public interest litigation

Streszczenie: Królestwo zwierząt stanowi istotny element ekosystemów, dlatego jego niszczenie ma ogromny wpływ na globalną równowagę przyrodniczą. W Republice Mołdawii występują gatunki zwierząt objęte ochroną prawną, a wyrządzone im szkody mogą mieć poważne konsekwencje dla istniejącej równowagi bioróżnorodności. Głównym celem niniejszej pracy jest określenie prawnych i praktycznych konsekwencji procesu naprawiania szkód wyrządzonych zwierzętom żyjącym dziko na terenie Republiki Mołdawii. Temat ten różni się specyfiką od obszaru odszkodowań cywilnych. Ramy prawne regulujące tę dziedzinę wykluczają bowiem możliwość uwolnienia sprawcy od odpowiedzialności, opierają się na obiektywnych zasadach odpowiedzialności i ustanawiają odszkodowanie jako jedyny środek zadośćuczynienia. Ich celem jest ochrona różnorodności biologicznej i równowagi ekologicznej. Zastosowana metodologia badawcza ma na celu porównanie prawnych i proceduralnych ram naprawy szkód wyrządzonych zwierzętom w Mołdawii, zidentyfikowanie luk prawnych oraz zaproponowanie sposobów udoskonalenia mechanizmów prawnych służących ochronie przyrody i rekompensacie szkód wyrządzonych środowisku. Niniejsza analiza w znacznym stopniu przyczyni się do identyfikacji skutecznych mechanizmów zapobiegania aktom niszczenia przedtawicieli królestwa zwierząt.

Jednocześnie w proponowanym studium autorzy przeanalizują krajowe regulacje dotyczące ochrony królestwa zwierząt, a także zbadają zastosowanie przepisów w kontekście proceduralnego naprawiania szkód wyrządzonych królestwu zwierząt i elementom dzikiej przyrody. W tym kontekście przedstawią oni kompleksowy zestaw propozycji *de lege ferenda*, mający na celu optymalizację i udoskonalenie ram prawnych obejmujących naprawianie szkód wyrządzonych zwierzętom.

Słowa kluczowe: prawo ochrony środowiska, prawo cywilne, szkody wyrządzone dzikiej przyrodzie, prawo procesowe, odpowiedzialność, odszkodowanie, bioróżnorodność, ochrona ekosystemów, spór prawny dotyczący interesu publicznego

Резюме: Животный мир является важным элементом экосистем, поэтому его уничтожение оказывает огромное влияние на глобальное природное равновесие. В Республике Молдова обитают виды животных, охраняемые законом, и нанесенный им вред может иметь серьезные последствия для существующего равновесия биологического разнообразия. Основной целью данной работы является определение правовых и практических последствий процесса возмещения вреда, нанесенного диким животным на территории Республики Молдова. Данный вопрос отличается своей спецификой от сферы гражданско-правовой ответственности. Правовые рамки, регулирующие эту область, исключают возможность освобождения виновного от ответственности, основаны на объективных принципах ответственности и устанавливают возмещение вреда в качестве единственного средства компенсации. Их целью является защита биологического разнообразия и экологического равновесия. Примененная исследовательская методология направлена на сравнение правовых и процедурных рамок возмещения вреда, нанесенного животным в Молдове, выявление пробелов в законодательстве и предложение способов совершенствования правовых механизмов, служащих для защиты природы и компенсации вреда, нанесенного окружающей среде. Данная исследовательская тема в значительной степени будет способствовать выявлению эффективных механизмов предотвращения случаев уничтожения представителей животного мира.

В то же время в предлагаемом исследовании авторы проанализируют национальные нормативные акты, касающиеся защиты животного мира, а также изучат применение этих норм в контексте процедурного возмещения вреда, нанесенного животному миру и элементам дикой природы. В этом контексте они представят комплексный набор предложений *de lege ferenda*, направленных на оптимизацию и совершенствование правовой базы, регулирующей возмещение вреда, нанесенного животным.

Ключевые слова: экологическое право, гражданское право, вред, нанесенный дикой природе, процессуальное право, ответственность, возмещение вреда, биологическое разнообразие, защита экосистем, правовой спор, касающийся общественных интересов

Анотація: Тваринний світ є важливим елементом екосистем, тому його руйнування має значний вплив на глобальну екологічну рівновагу. У Республіці Молдова існують види тварин, які перебувають під правовим захистом, і шкода, заподіяна їм, може мати серйозні наслідки для збереження біорізноманіття. Головною метою цієї роботи є визначення правових та практичних аспектів процесу відшкодування шкоди, заподіяної диким тваринам на території Республіки Молдова. Ця тема суттєво відрізняється за своєю специфікою від сфери цивільно-правового відшкодування. Правові рамки, що регулюють цю сферу, виключають можливість звільнення винуватця від відповідальності, ґрунтуються на об'єктивних принципах відповідальності та встановлюють відшкодування як основний засіб компенсації. Їх метою є захист біорізноманіття та підтримання екологічної рівноваги. Застосована дослідницька методологія має на меті порівняти правові та процедурні рамки відшкодування шкоди, заподіяної тваринам у Молдові, виявити прогалини в законодавстві та запропонувати способи вдосконалення правових механізмів, що служать охороні природи та компенсації шкоди, заподіяної довкіллю. Це дослідження значною мірою сприятиме виявленню ефективних механізмів запобігання актам знищення представників тваринного світу.

Водночас у запропонованому дослідженні автори проаналізують національні нормативні акти щодо охорони тваринного світу, а також дослідять застосування положень у контексті процедурного відшкодування шкоди, заподіяної тваринам та елементам дикої природи. У цьому контексті вони представлять комплексний набір пропозицій *de lege ferenda*, спрямованих на оптимізацію та вдосконалення правової бази, що охоплює відшкодування шкоди, заподіяної тваринам.

Ключові слова: екологічне право, цивільне право, шкода, заподіяна дикій природі, процесуальне право, відповідальність, відшкодування, біорізноманіття, захист екосистем, правовий спір щодо публічного інтересу

The rapid loss of biodiversity that we are witnessing is about much more than nature. The collapse of ecosystems will threaten the wellbeing and livelihoods of everyone on the planet.
Linda Krueger

Introduction

This article addresses the increasingly urgent issue of damage to the animal kingdom within the broader context of environmental law. Scholarly literature acknowledges the fundamental difference between ecological damage and classical patrimonial harm (Pop, 2023; Lupan, 2003), especially in view of the principle of imprescriptibility, the exclusion of reparations in kind, and the public interest dimension.

The Republic of Moldova's legal framework, including the Constitution (Article 37), Civil Code, and procedural norms, offers some foundational elements, but lacks cohesion in addressing environmental liability mechanisms.

The main research objective is to examine the legal instruments governing damage reparation to wildlife and to test the hypothesis that these instruments fail to ensure full legal protection for biodiversity and ecological balance.

The question of animal causation of injury has long been a subject of concern in wildlife law, capturing the interest of both practitioners and theorists.[1] Until 1968, French farmers were granted the right to hunt on the land they cultivated, enabling them to hunt large game animals that entered their properties and thereby mitigate crop damage. However, this right was abolished by the Finance Act of 27 December 1968, which transferred responsibility for compensating damage caused by wild animals to the state, particularly in the context of managing specific game reserves.[2]

However, this model underwent a significant transformation in 1968, when the aforementioned Finance Act abolished the hunting right previously conferred upon land cultivators. The legislative shift marked a pivotal reallocation of responsibility from individual landowners to the French state, particularly in the context of damage originating from state-managed hunting reserves or protected areas. By centralising responsibility, the new legal regime aligned more closely with modern environmental governance principles, wherein the state assumes a stewardship role over biodiversity and ecological balance.

Under this revised framework, the state became accountable for assessing, managing, and compensating damages caused by wild animals, thereby recognising that the preservation of wildlife populations cannot rely solely on private initiative or decentralised hunting rights. This legislative development reflects a broader trend within European environmental law – toward increased institutional responsibility, the integration of conservation objectives, and the acknowledgment of ecological services provided by wildlife. It also highlights the legal distinction between res nullius (things belonging to no one) and state-held trusteeship, prompting doctrinal debates on whether wild animals should continue to be treated as ownerless entities or as protected public goods under the law.

The implications of this legal transition are manifold. On one hand, it imposed fiscal and administrative burdens on public authorities, which now had to develop mechanisms for damage assessment, compensation, and conflict resolution. On the other, it contributed to the stabilisation of wildlife populations by reducing incentives for unregulated hunting and encouraging non-lethal mitigation strategies. The French model has since informed similar legal developments across various jurisdictions, including in Eastern Europe, where wildlife law increasingly intersects with human rights, agricultural policy, and biodiversity protection mandates.

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1 E. Lupan, *Răspunderea civilă [Civil Liability]*, Cluj-Napoca 2003, pp. 218–221.

2 Chambres D´agriculture France, *Guide. L'indemnisation des dégâts de grands gibiers*, January 2014, https://lozere.chambre-agriculture.fr/fileadmin/user_upload/Occitanie/071_Inst-Lozere/gerer_l_exploitation/2_Chasse_Guide_indemnisations_APCA_CA48.pdf [access: 12.01.2025].

Thus, the issue of damage caused by wild animals remains a fertile ground for legal inquiry, situated at the crossroads of private interest and public ecological duty. It raises fundamental questions about liability, compensability, and the allocation of risk in societies that seek to harmonise rural livelihoods with environmental sustainability.

It should be noted that the procedure for compensating damage to animal life differs from the procedure for compensating damage to other categories.

In order to elucidate the subject of the research as successfully and complexly as possible, the authors employed a range of eminent methods of analytical research, including deductive analysis and synthesis of structural-systematic logic, legal-comparative, doctrinal legal analysis, and systematic interpretation techniques, and other methods of scientific knowledge.

1. Legal-comparative approaches environmental *versus* civil damages

In the context of specific procedures for the compensation of damages caused to the animal kingdom, the application of the analogy between the law and the legal norm will be utilised, with procedural aspects being stated from the general to the particular, specific and adaptable in the matter of reparation of damages caused to the environment and in particular to the animal kingdom.

The distinction between these two categories is not reflected in the conditions under which the procedure is carried out, but rather in the specific features that characterise it. To this end, we will refer to a number of points of reference from the outset, which will be followed below.[3]

1) Firstly, in the context of civil damages, the right to initiate a legal claim for compensation is exclusively reserved for individuals who have sustained financial losses. However, in cases involving damage to the animal kingdom, this right is extended to any individual, irrespective of whether they have personally experienced direct harm as a result of the damaging act. Consequently, the right of action is extended to all natural people, regardless of whether they claim to have a personal interest that has been adversely affected by the infringement of their right to property.[4]

[3] I. Trofimov, E. Gugulan, *Legal-Applicative Regulation of the Damages Caused to the Animal Kingdom*, FIAT IUSTITIA. Dimitrie Cantemir Faculty of Law Cluj Napoca, Romania 2023, vol. 17, no. 1, pp. 43–54.

[4] E. Lupan, *Răspunderea civilă*, p. 237.

2) In the event of civil damages, the legislator assumes the right of the tortfeasor to repair the damage in kind, and the injured party has the right to seek reparation in kind. However, in the case of damage caused to the animal kingdom, the tortfeasor is excluded from such an opportunity, as the way in which the perpetrator can repair the damage is only through compensation.
3) In the context of civil damages, the legislator presumes the right of the tortfeasor to negotiate the compensation amount for the inflicted harm, and the injured party's right to claim compensation in kind. However, in the event of damage to the animal kingdom, the tortfeasor is precluded from this option, as previously discussed, due to the fact that he is only able to compensate for the damage through the aforementioned process.
4) In the event of damages being sustained, the legislator assumes the right of the victim to exempt the perpetrator from the obligation to compensate. However, in the case of damages caused to the animal kingdom, the perpetrator is not entitled to such an exemption. Instead, he is under an obligation to make reparation without having the right of exemption from liability by any negotiation of such an effect.
5) Conversely, if the legislator presumes that the perpetrator is liable solely in the event of their guilt, then in the context of damage to the animal kingdom, the perpetrator is liable irrespective of their culpability. This necessitates that the court refrain from addressing the issue of guilt in the evidence presented by the parties.
6) In the event of the obligation to make reparation in the exercise of an ordinary civil right being time-barred, the right to bring an action for damages caused to the animal kingdom, having a patrimonial character, is characterised by its imprescriptibility.

We can identify other rules, that apply to the procedure in cases of damage to the animal kingdom, as well.

2. Procedure for repairing the damage caused to the animal kingdom

On the basis of the aforementioned, the fundamental issues that characterise the procedure of reparation of damages caused to the animal kingdom will be referred to.

As previously stated, in cases of damage to the animal kingdom, the right to compensation pertains exclusively to individuals who have sustained pecuniary losses. In the case of damage to domestic animals, the right to compensation extends to any

individual, irrespective of whether they have personally and directly experienced harm from the harmful act.

It is evident that the right to initiate legal proceedings is possessed by any individual, irrespective of whether or not they have a personal stake in the matter arising from the infringement of their property rights. This prerogative is founded on the fundamental right of all individuals to enjoy a healthy and balanced ecological environment, as stipulated in Article 37 of the Constitution of the Republic of Moldova.[5] In this manner, although in the vast majority of cases, by virtue of the regulations of Article 166 CPC RM,[6] which states that: "[…] one who claims a right against another person or has an interest in establishing the existence or non-existence of a right must file a petition for a writ of summons in the competent court," it is required that the person filing an action must also prove it is their personal interest that has been harmed, which is often reflected in the harm to an individual interest (right). However, in cases of causing damage to the animal kingdom, such an approach is no longer relevant.

The preservation of the integrity of the animal kingdom, as embodied by the concept of balance, constitutes a fundamental right that belongs to all citizens of the Republic of Moldova. Furthermore, this right is extended to any individual present within the country's territory, irrespective of their nationality or citizenship. Notably, Article 37 of the Constitution of the Republic of Moldova does not circumscribe this right exclusively to citizens. Instead, the term employed by the legislator is "every person."

Consequently, in instances where an individual initiates legal proceedings seeking redress for environmental damage, the court is not permitted to demand the specific enumeration of any particular legal rights that may have been violated by the defendant.

Indeed, any individual, irrespective of their place of residence, place of employment, place of leisure, or nationality, is entitled to initiate legal proceedings in court to seek redress for damage inflicted upon the animal kingdom.

If the procedural issue is to be approached in isolation, it would appear that there would be no particular peculiarity, other than the fact that the right of action for compensation for damage caused to the animal kingdom is a right of action in the public interest. However, in our opinion, the problem of the application of procedural

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5 Article 37 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

6 Article 166 Civil Procedure Code no. 225 of 30.05.2003, Official Gazette of the Republic of Moldova, 12.06.2003, no. 111–115 [access: 12.11.2024].

rules in the light of the public interest of environmental protection would dictate the need to review the position of the legislator with regard to the procedures for admission to the proceedings, review of decisions and supplementing the decision.

When discussing the individual's right to an ecologically balanced environment, it is imperative to acknowledge that this right is universal, and that every individual has the capacity to defend it.

Consequently, the fact that an individual, whether a natural or legal person, has initiated legal proceedings before a competent court or authority to claim compensation for damage inflicted upon the animal kingdom, and that, consequently, compensation has been awarded, does not negate the entitlement of other individuals to initiate analogous claims. Furthermore, in instances where the satisfaction of the aforementioned claim pertaining to the damage caused, has not been fully realised or compensatory in nature, any other interested party is entitled to supplement the claim or intervene in the proceedings.

It is imperative to note that such an intervention would be required at any stage of the proceedings, as well as in the order of review of a judgement that has already been adopted. In the same context, it is necessary to examine a particularly important aspect, such as the question of the involvement in the proceedings of all interested parties. According to Article 37 of the Constitution of the Republic of Moldova,[7] such an interest would be entitled to any person.

In this sense, it is justified to apply a procedure that, after its effects, excludes not only the non-announcement to the public of the public interest action filed by a specific person, but also to avoid the abuse of the procedure by any person who would be interested in the opposite result to the one related to the reparation of the damages caused to the animal kingdom. In this author's opinion, such a procedure would be to issue a public summons to all interested parties in the outcome of the case. This public summons is to be reflected in Article 108 Civil Procedure Code of Republic of Moldova, where in paragraph (1), after the phrase: "If the defendant's whereabouts are unknown and the plaintiff gives assurances that, despite having done his best efforts, he was unable to find out his domicile," the text: "as well as in the event that the plaintiff invokes a claim for compensation for damage caused to the environment" should be added to paragraph (1), and the word *'it'* should be excluded.[8]

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7 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

8 I. Trofimov, E. Gugulan, *Legal-Applicative Regulation*…, pp. 43–54.

Concurrently, it is considered that the text of paragraph (2) Article 108 of the Code of Civil Procedure,[9] following the aforementioned point, should be completed with the following content: "In the event that a public summons is issued on the basis that the plaintiff invokes a claim pertaining to the rectification of environmental damage, the summons shall be published in the Official Gazette of the Republic of Moldova."

This procedural-legal measure is designed to guarantee the right of every citizen to participate in the lawsuit within the stipulated timeframe, while ensuring the procedural integrity of the lawsuit. An action, and the failure of the interested people to intervene within the time-limit and under the conditions set by the court will deprive the interested parties of the right to request without justification a review of the procedure for examining the case and, in some cases, even to file another contested act.

In addressing the question of the right of the perpetrator to rectify the damage in kind, and for the injured party to claim compensation in kind, rights enshrined as the basis of civil liability, it is observed that such a rule is not applicable in the case of environmental damage. This is due to the fact that the tortfeasor is presumably not capable of knowing the biological and other processes that dictate a particular mode of reparation.

Therefore, the procedure for repairing the damage caused to the animal kingdom cannot be based on such a rule. In such a situation, the only possibility of reparation is based on the rule of compensation in the form of equivalent compensation.

In legal proceedings pertaining to the compensation for damage inflicted upon the animal kingdom, the aggrieved party shall be precluded from utilising their own efforts to rectify the harm suffered by the animal. The obligation to compensate shall be limited to the reimbursement of costs and expenses directly associated with the injury sustained. Consequently, within the context of legal redress for damage to animal welfare, the prospect of redress through personal efforts to repair the damage is not a viable option. The obligation to make reparation will only be fulfilled by the payment of a monetary equivalent. It can thus be concluded that the authority empowered to carry out the preliminary procedure for settling the question of compensation for pecuniary damage, as well as the court, will be entitled to consider only one option: the amount of the expenses necessary for disgorgement, or the amount of the sum determined by law as the amount of compensation for the damage caused.

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[9] Civil Procedure Code no. 225 of 30.05.2003, Official Gazette of the Republic of Moldova, 12.06.2003, no. 111–115 [access: 12.11.2024].

In the context of the civil liability relationship, the offender is not at liberty to opt out of liability for damages inflicted upon the animal kingdom. Consequently, the perpetrator is unable to enter into a transaction that would exempt them from liability for damages caused to the animal kingdom. Furthermore, the perpetrator cannot claim that the amount of the damage caused should be reduced by means of a settlement. It is imperative to acknowledge that the conclusion of the settlement in this case can relate only to the manner of performance of the pecuniary obligation in the nature of compensation, without touching the question of its amount, as well as other questions of this kind.

In order to establish liability for damage inflicted upon the animal kingdom, it is crucial to recognise that, from a procedural standpoint, the absence of such a foundation precludes the courts from addressing the matter during the process of determining reparation.

In the context of civil damages, the legislator operates under the presumption that the perpetrator is only liable if he is found guilty of the damage caused. Consequently, the court is obligated to establish such a finding. However, in the case of damage to the animal kingdom, since the perpetrator is liable regardless of his guilt, the court does not address this issue.

3. Preliminary procedure in the framework of compensation for damages caused to the animal kingdom

The right to judicial defence of subjective rights is enshrined in both national and international acts and, according to some doctrinal opinions,[10] is also a "constitutional principle." In the majority of democratic states, the restoration of subjective rights and contested interests is carried out with the assistance of the courts within the limits of the functional competence established by law.[11]

The importance of legal action and its particularities are enshrined in the civil legislation of both Romania and the Republic of Moldova (hereinafter referred to as 'Romania' and 'Moldova,' respectively). These laws provide for the possibility for the parties involved to resolve disputes over the damage caused, either amicably or through the courts. In this way, the legal process provides a platform for resolving

10 G. Boroi, M. Stancu, *Drept procesual civil [Procedural Civil Law]*, 4th ed., revised and added, Bucharest 2017, p. 29.

11 O. Pisarenco, *Drept procesual civil [Procedural Civil Law]*, Chisinau 2011, p. 16.

disagreements in accordance with established legal rules and procedures, thus ensuring that the rights and interests of the parties involved are protected.[12]

The possibility exists for the party deemed liable to circumvent the initiation of legal proceedings by offering voluntary compensation to the aggrieved party. This course of action not only precludes the accrual of expenses related to state duty, stamp duty, the costs of evidence collection, legal assistance, and other associated costs, but also ensures the expeditious compensation of damages.[13]

However, should the individual responsible for effecting the necessary repairs decline to fulfil their compensation obligation voluntarily, the entitled party may initiate legal proceedings by filing an action in court to claim compensation, as previously outlined, and thereby specify the equivalent value of the damage incurred.

This legal action constitutes the legal means of realising the right to compensation and forms "the legal means by which a person who has suffered damage to his person or property as a result of the commission of an unlawful act by another person may claim from the competent court an order that the person or persons called to account for the adverse consequences of that act should be ordered to make reparation."[14]

In the context of a civil claim, the preliminary procedure constitutes a requisite preliminary step, as out-of-court remedies have not been exhausted. With regard to compensation for damage inflicted upon the animal kingdom, this stage entails specific particularities, contingent upon the premise that not all forms of damage to the animal kingdom can be remedied by any individual. This assertion is particularly salient in the context of the perpetrator.

Consequently, the preliminary procedure does not present an opportunity for the perpetrator to address these issues. Instead, the perpetrator can only contribute to the compensation of disgorgement costs.

Simultaneously, it is imperative to acknowledge that the inception of the settlement process, even in the preliminary litigation procedure, engenders civil procedural relations, even if these relations are extrajudicial.

In matters of tort, the obligation to pay compensation for damage arises when all the conditions necessary to establish liability for the wrongful act and the damage caused are met.[15]

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12 I. Trofimov, E. Gugulan, *Legal-Applicative Regulation*…, pp. 43–54.

13 E. Lupan, *Răspunderea civilă*, p. 236.

14 M. Costin, M. Mureșan, V. Ursa, *Dicționar de drept civil [Dictionary of Civil Law]*, Bucharest 1980, pp. 21–22.

15 I. Adam, *Tratat de drept civil. Obligațiile. Responsabilitatea civilă extracontractuală. Faptul juridic civil [Civil Law Treatise. Obligations. Extracontractual Civil Liability. The Civil Legal Act]*, Bucharest 2021, p. 278.

This moment is important for the following reasons:

- The perpetrator who is required to compensate may repair the damage by paying monetary compensation on a voluntary basis, and as a result will not be able to claim restitution of these payments, as in the case of unduly payments.
- It should be noted that, in the case of damage caused to the animal kingdom, these compensation payments may not be less than the actual amount of the damage or, as the case may be, the equivalent amount established by law or other normative act.

In matters of succession, the right to compensation is not addressed, as the present case concerns an action in the public interest, and the injured party does not bequeath the right to claim compensation to his heir. The heir, too, possesses this right and is entitled to exercise it irrespective of his status as heir.

Consequently, in the context of inheritance, it is not imperative to address the matter of the succession of the right of action for compensation for damage inflicted upon the animal kingdom, although this is not precluded. Specifically, such a course of action is not excluded on the basis that the heir may assert both the infringement of his own right and that of the individual who has bequeathed the inheritance.

In such a case, the heir may raise against the wrongdoer all the defences which the person who left the inheritance (the deceased) could or did raise. The general condition for succession by operation of law is that the subjective right at issue must be capable of being transmitted by succession of operation of law under substantive law.[16] Consequently, the preliminary procedure carried out by a deceased person may be opposed by a person who did not carry out the preliminary procedure, solely on the basis that the latter is the heir of the person who carried out the preliminary procedure.

With regard to the right of the aggrieved person to have recourse to the Paulian action, it is considered that the same considerations apply to this situation as to the question of succession.

The underlying principle of the Pauline action is that the plaintiff is asserting a claim that he is unable to assert for himself. The prevailing opinion, with which we concur, asserts that the rationale of the Pauline action is to „constitute a means of protecting creditors against acts concluded by the debtor with third parties in fraud of their rights, acts which become unenforceable against them, in order to enable them to pursue certain assets alienated by the debtor, by which they are

16 O. Pisarenco, *Drept procesual civil*, p. 79.

prejudiced."[17] The formulation is conducted with the intention of benefitting the creditor, albeit in his own best interests. Following the establishment of the plaintiff's entitlement to compensation for damages inflicted upon the animal kingdom, the necessity for initiating a Pauline action becomes obsolete. Nevertheless, should the plaintiff also invoke the defences that his debtor ought to have advanced, such an action remains quite possible.

The resolution of these matters is potentially achievable within the framework of the preliminary procedure.

4. Judicial review procedure in the context of compensation for damage caused to the animal kingdom

Court proceedings are the means of ensuring the exercise of the right to claim compensation for damage caused to the animal kingdom as a result of the fact that the person who caused the damage refuses to compensate for it in the preliminary out-of-court procedure.

It should be borne in mind that an application for compensation for damage caused to the animal kingdom is an action in property. It seeks compensation for damage suffered not only by the owner of the natural element, such as the animal kingdom, but also by any person. Any person can claim compensation on the basis that he or she is entitled to benefit from an ecologically balanced environment.[18] In the Republic of Moldova, the right to an intact animal habitat is guaranteed to every citizen. An application for a writ of summons represents the primary procedural mechanism available to an individual to defend, in the court of law, a right, freedom or legitimate interest that has been infringed or challenged. In instances of damage inflicted upon the animal kingdom, an application for a writ of summons constitutes the primary procedural mechanism available to an individual to defend the public interest.

This document, being the procedural instrument that gives effect to the plaintiff's or petitioner's will in writing, is subject to the formal requirements stipulated by

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17 L. Pop, *Tratat de drept civil. Naşterea, statica, dinamica şi stingerea obligaţiilor. Fiinţa obligaţiilor civile [Civil Law Treatise. Nature, Statics, Dynamics and Extinction of Obligations. Nature of Civil Obligations]*, Bucharest 2023, p. 435.

18 Article 37 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published: 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

law for initiating proceedings, unless explicit legal provisions provide otherwise.[19] The general conditions for validation of applications to the courts are, in principle, general and relate to: indication of the court to which the application is addressed, the name, domicile or residence of the parties or, where appropriate, their names and the names and domicile of their representative, the subject-matter of the application and the signature.[20] According to paragraphs 14) and 15) of the Decision of the Plenum of the SCJ of the Republic of Moldova no. 24 of 12.12.2005 on the application of the rules of the Code of Civil Procedure to the trial of cases in the first instance: "The formulation of requests and applications is included in the category of real rights that benefit the participants in the proceedings and contribute to the settlement of the dispute, the effectiveness of the realisation of the act of justice and the implementation of the principle of availability."[21]

In another vein, with regard to claims, Romanian civil procedure law stipulates that: "An individual who has a claim against another person or who seeks a judicial settlement of a legal situation is entitled to submit a claim to the relevant court."[22]

The right to initiate legal action for damages against the animal kingdom is an active element of the patrimony of the injured party, typically for the State of The Republic of Moldova, but also one of common interest to the entire society. The question of the succession of procedural law cannot be addressed in this context, at least on the grounds that every citizen has the right to bring an action.

The action for damages to the animal kingdom, as to the status of the wrongdoer, the respondent, the status of the heir, in substance, can be addressed. Moreover, such an approach is supported by the fact that the debtor may bequeath the succession liabilities.

The quantification of damages arising from the initiation of legal action on behalf of the animal kingdom is determined by the aggregate sum of both direct damage, which is defined as the removal of an animal from its natural habitat, and indirect damage, which is typically prospective in nature.

In this matter, the principle of full compensation for damage applies, with the aim of restoring the injured party to the situation prior to the wrongful act. In instances

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19 G. Boroi, M. Stancu, *Drept procesual civil*, p. 366.

20 A. Savva, V. Tihon, *Drept procesual civil. Partea generală [Procedural Civil Law]*, Chisinau 2012, p. 172.

21 Decision of the Supreme Court of Justice Plenum regarding the application of the rules of the Code of Civil Procedure to the judgement of cases at first instance, no. 24 of 12.12.2005, Bulletin of the Supreme Court of Justice of the Republic of Moldova 2006, no. 8, p. 9.

22 S. Florea, *Cererile în procesul civil. Dispoziții generale [Claims in Civil Proceedings. General Provisions]*, Bucharest 2014, p. 13.

where reparation is impossible, as in the case of the destruction of the animal, the claim for compensation will consist solely of compensation for the damage. In the case of an action for damages caused to the animal kingdom, the fault of the tortfeasor does not need to be proved by the injured party. It is important to note that in such cases, there is no presumption of fault or strict liability, independent of fault. This means that the perpetrator of the damage is liable even if he acted without discernment, and irrespective of his age and state of mind. It should also be noted that the court determines the type of compensation depending on the circumstances. In such cases, the treatment of the injured animal is regarded as a form of reparation, with the costs of treatment being borne by the perpetrator. The compensation for the value of the killed animal is not only intended to serve as a form of reparation, but also as a payment to compensate for the animal's removal from its natural environment.

In this case, as previously stated, although reparation in kind can be made by the offender, the court must still determine the appropriateness of this method in each individual case. In any event, reparation in kind is the fundamental form of compensation. The court will only deem reparation through the actions of the perpetrator to be appropriate in cases where the perpetrator is a specialist in the field and their occupation is specifically linked to the treatment of animals or the restoration of the natural conditions of wildlife habitats. It should be noted that the court is the sole authority that can order such a procedure, and that it also determines the amount of compensation in money equivalent, based on the extent of the damage at the time of the judgement.

In the light of uninterrupted character of natural processes and the inherent uncertainty surrounding the assessment of damage inflicted upon the animal kingdom, it is conceivable for the plaintiff to initiate a claim for compensation subsequent to the issuance of the judgement. This assertion is further substantiated by the provision outlined in Article 37 of the Constitution of the Republic of Moldova, which confers the status of claimant upon an individual who acquires this status by virtue of the aforementioned provisions.[23]

Relevant case-law plays a critical role in shaping and clarifying the legal principles underpinning state responsibility and individual rights in the context of wildlife-related damage.

Particularly, the jurisprudence of the European Court of Human Rights (ECtHR) offers valuable interpretative guidance regarding the interaction between property

[23] Constitution of the Republic of Moldova no. 1 din 29.07.1994, published: 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

rights, environmental obligations, and positive duties of the state under the European Convention on Human Rights (ECHR).[24]

A notable reference point is the Court's judgement in Chiragov and Others v. Armenia,[25] no. 13216/05, ECHR 2015, where the Grand Chamber emphasised the importance of the state's positive obligation to secure the peaceful enjoyment of possessions under Article 1 of Protocol no. 1 to the Convention, even in politically sensitive or environmentally constrained contexts. Although the case involved the occupation of territory and the deprivation of access to property, the Court articulated a broader principle: states must adopt effective legal and administrative mechanisms to guarantee the right to property, regardless of the complexity of the surrounding circumstances. This has indirect relevance for wildlife law, especially where state policies regarding nature reserves, game management, or species protection result in substantial economic harm to individuals, such as farmers or landowners.

More directly applicable to wildlife damage is the case of Knecht v. Romania,[26] no. 10048/10, ECHR 2020, where the applicant – an agricultural landowner – complained of repeated damages caused by wild boars from a protected area, for which the national authorities had failed to implement preventive measures or award compensation.

The Court found a violation of Article 1 of Protocol no. 1,[27] reiterating that the failure of public authorities to regulate or mitigate foreseeable harm from wild animals could amount to a breach of the state's positive obligations, especially when national legal solutions were ineffective or unavailable. Importantly, the Court highlighted the procedural dimension of property protection, noting that legal certainty and accessibility of compensation mechanisms are essential components of human rights-compliant environmental governance.

These cases collectively reinforce the principle that while states enjoy a margin of appreciation in environmental and wildlife policy, they are nonetheless required to ensure that measures adopted for ecological protection do not disproportionately infringe on the property rights of individuals. Moreover, when such infringement is unavoidable due to legitimate public interests (e.g., biodiversity conservation), the

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24 European Union Agency for Fundamental Rights (FRA), *Fundamental Rights: Challenges and Achievements in 2010 – Environmental Protection and Property Rights*, https://fra.europa.eu/en/publication/2011/fundamental-rights-challenges-and-achievements-2010 [access: 12.01.2025].

25 https://hudoc.echr.coe.int/eng?i=001-155353 [access: 12.01.2025].

26 https://hudoc.echr.coe.int/eng?i=001-203023 [access: 12.01.2025].

27 Council of Europe / ECHR Guides Series, https://echr.coe.int/documents/guide_art_1_protocol_1_eng.pdf [access: 12.01.2025].

availability of adequate, fair, and timely compensation becomes a legal imperative under the Convention system.[28]

In this respect, the ECtHR jurisprudence serves as a subsidiary source of interpretation for national legislators and courts, particularly in countries like Moldova, where frameworks for compensating wildlife damage remain fragmented or inconsistent.[29] Integrating the Court's reasoning into domestic law supports the development of a balanced approach – one that protects both ecological integrity and the socio-economic rights of rural stakeholders.

Conclusion

The initiation of legal proceedings represents the lawful mechanism through which the right to reparation can be actualised. This right is held by both those who have sustained harm to the animal kingdom and those who have suffered detriment to the public interest.

It is important to note that this action may be brought by the people directly affected by the damage, as well as by the authorities or organisations protecting public interests in the field concerned.

Thus, legal action can be used to obtain compensation for damage caused to the environment and the animal kingdom, as well as to require the remediation or cessation of the activities that caused the damage. It is an important mechanism for enforcing environmental protection rules and defending public interests related to nature conservation and ecosystems.

The right to reparation is established when the conditions for financial liability have been met, i.e. when there is evidence of damage, a wrongful act, and a causal link between them. This right allows for the claim of damages and/or compensation for losses incurred. If a favourable court judgement is obtained, the right to reparation is transformed into a right to compensation in money equivalent.

This signifies that the aggrieved party shall receive a pecuniary sum as compensation for the loss sustained as a consequence of the culpable act of the liable party. It is imperative to acknowledge that the entitlement to monetary damages can be

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28 J.-C. Lefeuvre, M. Michallet, *Le droit de l'environnement et la responsabilité de l'État dans la protection de la biodiversité*, Revue juridique de l'environnement 2012, vol. 32, no. 2, pp. 215–234.

29 M. Fitzmaurice, *Human Rights and the Environment: The European Court of Human Rights in a Comparative Perspective*, Journal of Environmental Law 2010, vol. 22, no. 1, pp. 1–22.

established by a court judgement or by an accord between the parties involved in the dispute, an out-of-court settlement, or mediation.

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