

Contribution of Compensation for Wild Animal Attacks to Wild Life Conservation

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Abstract

Objectives: To reveal the state's legal liability for compensation for property damage and bodily injury caused by wild animals based on the decisions of the Administrative Court. **Methods/Statistical Analysis:** Administrative court decisions on claims for compensation for property damage and bodily injury caused by wild animals, and interpretation of rules and principles established by judicial bodies were analyzed. **Findings:** The Administrative Court decisions regarding lawsuits for property damage and bodily injury caused by wild animals' decree that the damages in question be compensated by the State in accordance with strict liability principles. **Application/Improvements:** The provisions in the legal regulations in force only concern the prohibition of activities that might pose any harm to wild animals. Regulations on liability for damages caused by wild animals should be introduced to the law.

Keywords: Compensation, State Liability, Wild Animal Attacks, Wild Life Conservation

1. Introduction

Millions of species from bacteria to fungi, from plants to animals constitute the biological diversity on Earth^{1,2}. Wild animals, defined as non-domesticated and non-cultivated vertebrates and invertebrates, are also part of this diversity. All non-domestic animals and non-cultivated plant species living in natural habitats constitute the wild-life³.

Such factors as diminishing food sources, alteration and loss of habitats, constant deforestation, destruction of forest ecosystems and rapid increase in human population force wild animals to move out of their natural habitats and intrude into residential areas⁴. Due to their wild nature and instincts, wild animals pose danger to humans⁵. In addition, protected endangered animals sometimes overpopulate and are forced out of their natural habitats and into areas populated by humans in search of refuge and food sources, damaging crops or being a health hazard to humans.

The private law contains regulations stipulating that pet owners are objectively held liable for any damage caused by their pet's instinctive actions on the grounds that even if they did not engage in subjective misconduct, they failed to carry out their supervisory duty. There are many publications on this subject matter in the scientific literature.

Regulations prohibiting any action that may cause damage to wildlife species, and procedures for compensation for damages caused by wild animals fall within the scope of public law. Legal regulations impose sanctions only against acts of violence that may cause harm to wild animals. Not only are there no legal regulations on compensation for damage caused by wild animals but there are any even published works on this subject matter. The gaps in existing laws regarding this issue are filled by case laws.

The subject of liability and compensation for damages caused by wild animals was alien to the Turkish legal system and has been recently addressed in judicial decisions.

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One of the greatest challenges of this study is, therefore, the lack of research on this subject matter, which, however, makes this study an original contribution to the limited literature.

This study investigated administrative court decisions and principles of judicial bodies regarding claims for damages caused by wild animals.

2. Methodology

Turkish law does not recognize that persons are expected to suffer from damages caused by wild animals protected by national legislation and international conventions. The legal gap pertaining to compensation for damages is filled by judicial decisions. Therefore, judicial decisions on the subject matter were obtained from the National Judiciary Informatics System (NJIS), and a literature review was also conducted. Data were mainly drawn from judicial decisions. Judicial decisions on claims for injuries and deaths caused by wild animals reported in the news and social media were also analyzed.

3. Animals in Law and Liability for Damages Caused by Them

The conception that animals should be protected by law tops the agenda as people are becoming more and more vulnerable to the adverse effects of global warming disturbing the balance of nature⁶. The rights granted to animals by humans are intended to protect them not as individuals, but as species, and to restore the ecological balance deteriorated by humans⁷.

The Universal Declaration on Animal Welfare (UDAW) defines the regulations protecting animals. The Law on the Protection of Animals No. 5199 adopted in 2004 in Turkey preserves wild animals' right to life, food and medical care, protects them from pain and torture, and prohibits the committal of genocidal acts against them⁸. Wild animals should not be taken from their natural habitats and kept in captivity, and they should be properly cared and fed in their natural environment. The Law on Land Hunting No. 4915 contains provisions protecting wild animals and their habitats.

Turkey has signed numerous international conventions on the protection of nature and wildlife such as the Convention on Wetlands of International Importance (Ramsar), the Convention on International Trade in

Endangered Species (CITES) of Wild Fauna and Flora and the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), which aim to protect specific habitats, activities and species, respectively⁹.

Domestic and wild animals occasionally cause damages to humans and their properties. Some animal species have recently been granted protection by law in Turkey. However, these species that are not allowed to be hunted under any circumstances appear to cause damages to humans, their properties and crops, especially in winter. These animal attacks are announced through mass media, resulting in fear and panic among the public¹⁰.

While regulations protecting animals help restore the natural balance, people are sometimes attacked by wild animals and suffer bodily injury and property damage.

Legal regulations are intended to protect animals and their habitats. However, animals sometimes cause damages to humans and their properties. Turkish law does not contain any regulations on compensation for damages caused especially by wild animals. Although private law imposes strict liability on pet owners for any damages or injuries inflicted by their animals and contains regulations on compensation, it contains no regulations pertaining to compensation for damages or injuries caused by protected wild animals. Compensation for such property damage and bodily injury has become a recent issue of concern in judicial decisions in Turkey. This is partly due to the fact that certain aspects of the protection of wild animals have recently been introduced to legal regulations.

3.1 Liability for Damages Caused by Animals According to the Principles of Private Law

Roman law has introduced important regulations on owners' liability for any damages caused by their animals¹¹. These regulations have been valid since the Law of the Twelve Tables, which stood at the foundation of Roman law¹².

Special provisions have been introduced to the Turkish Code of Obligations in respect of compensation for damages caused by pets under strict liability principles.

Article 67 of the Turkish Code of Obligations outlines animal owners' liability in regard to their animals under the title of "strict liability"¹³⁻¹⁹. Article 67 stipulates that a person who permanently or temporarily assumes the

responsibility for the care and supervision of an animal shall be held liable for any damages caused by the animal. In the event the owner or keeper of the animal proves that he/she has acted in due diligence in order to prevent the occurrence of the damages concerned, no liability shall be imposed. However, in the event the animal has been frightened by another person, the owner or keeper of the animal shall have the right of recourse against the person in question.

Article 68 of the Turkish Code of Obligations stipulates that in the event an animal causes damages to an immovable property, the person in whose possession the immovable property is shall have the right to seize and detain the animal in question until the damages have been repaired. The owner of the immovable property shall also have the right to restrain or confine the animal if conditions and circumstances justify such a measure. In that case, he/she shall, however, inform the owner of the animal of the situation.

3.2 Administrative Liability According to the Principles of Public Law

Britain and the USA have the Anglo-Saxon system of law where administrative law is enmeshed with common law. However, such countries as Turkey and France have a separate system of administrative court addressing administrative cases exclusively. Administrative law, a nascent branch of law, is a non-codified and largely jurisprudential branch of law²⁰. Administrative court decisions mostly impose strict liability on the State for compensation for damages caused by wild animals.

Liability is the obligation of a person under the applicable law to suffer the consequences of an action, behavior or event that arises from his/her intent, negligence, imperfection or imprudence and to provide compensation for damage resulting from that action, behavior or event for which he/she is deemed to be responsible²¹. In private law, a legal entity cannot be held liable for damages caused by the negligence or offence committed by a person²².

A new type of liability with its own rules has been developed in administrative law. During this process, the concept of liability in private law and the features of public law were taken into consideration²³. Administrative liability is determined based on the Code of Obligations and the Civil Code. These laws are applied to the extent that

they comply with administrative law under the umbrella of the mandatory provisions of the Constitution²⁴.

Administrative liability is the obligation of public authorities to compensate damages resulting from acts and actions which they are obliged to fulfill²⁵.

The increase in the quality and quantity of public services has also led to an increase in pecuniary and non-pecuniary damages suffered by individuals. This situation has reinforced the dominance of the view that such damages should be compensated by the State. Full remedy actions regarding the administrative liability for damages are based on either fault-based liability or strict liability.

Administrative acts and actions may cause pecuniary and non-pecuniary damages. Administrative liability is based upon the following principles: There must be an actual, current and irrefutable damage; the act or action that caused the damage must be attributable to the administration, and a causal relationship must be established between the damage and the act. The absence of one of these conditions exonerates the administration from liability²⁶.

The neglect or failure on the part of the administration to fulfill its duties specified by law constitutes negligence²⁷. Negligence occurs when public servants and officials fail or neglect to fulfill their duties imposed by virtue of their official positions or required by law. Faults resulting in neglect of duty are those where a relationship can be established between public officials and their duties, and those that result from the exercise of their authority and are inseparable from their official positions²⁸. With regard to the establishment and functions of the public service, there are three types of negligence: delay in service delivery, poor service delivery and failure of service delivery.

Strict liability is the obligation of the administration to compensate for damages arising from its legal acts and actions. This type of liability concerns public order, and therefore, can be raised at any stage of a proceeding. It is also an objective liability, and therefore, compensation does not lead to the condemnation of the administrative action. State liability for damages are grounded on strict liability due to a number of international agreements in force²⁹.

The presence of a causal relationship between the damage and the act committed by the administration should suffice to indicate that the administration is at fault. In order to determine administrative liability, full

remedy actions first investigate whether there is neglect of duty, and in the absence thereof, they make a determination on whether strict liability principles should apply.

The Council of State decides to impose either fault-based or strict liability depending on the case and the extent of damage incurred instead of drawing a conclusion in light of certain rules³⁰. The decisions of the Council of State, therefore, show that strict liability principles are not based on a codified system with a consensus³¹. In public law, strict liability conditions are built on two basic principles.

The risk principle allows for the compensation of damages caused by dangerous acts and activities undertaken by the administration³². However, this risk in question should be exceptional and of a serious nature.

In the event the administration cannot be held accountable on the grounds of fault-based liability and risk-liability, it can be held liable on the basis of the principle of the balancing of sacrifices, also referred to as liability for the disruption of the principle of equal apportionment of public burdens. It is a complementary liability concerning public order, and therefore, can be raised at any stage of a proceeding. It is often applied in compensation cases for permanent damages that are not caused by accidents³³.

3.2.1 Administrative Liability for Damages Caused by Wild Animals

Wild animals are undomesticated animals such as the lion, panther and bear that are aggressive by nature and are not generally kept as pets³⁴. The Edictum de Feris in Roman law is a remedy concerning liability for damages caused by non-domestic animals³⁵⁻³⁶.

The Edictum de Feris allows the victim of a wild animal attack to file a lawsuit for compensation for property damage and bodily injury. The edict also prohibits the presence in public spaces of some wild animals that are considered to be dangerous, and inflicts punishment in case of non-compliance with this prohibition³⁷.

Roman law holds the owner or keeper of a wild animal, which is known to have a propensity to attack and pose a risk to the public, strictly liable for damage caused by the animal without any proof of negligence, regardless of whether or not he/she is was capable of preventing the damage from occurring³⁴. Roman law mostly addresses the liability of the owners of domestic animals such as the horse, mule, and sheep for any damages. It is, therefore,

only natural that it also holds the owners of wild animals liable for any damages caused by those animals³⁸.

3.2.2 Administrative Liability for Damages Caused by Protected Wild Animals

Today, the State is obliged to ensure public order through law enforcement by preventing damages to people and their properties³⁹. The task of protecting forests and various species of plants and animals inhabiting in them is carried out by forest law enforcement, which is a special administrative law enforcement unit⁴⁰.

The General Directorate of Nature Conservation and National Parks (GDNCNP) within the body of the Ministry of Food, Agriculture and Livestock is authorized and responsible for the protection of wild animals in forests in Turkey. The GDNCNP is obliged to fulfill all obligations concerning the protection of species and habitats designated by the Ministry within the framework of the Law on Land Hunting No. 4915 and relevant legislation, those in national and international lists, and those protected by national legislation and international conventions⁴¹.

Administrative acts and actions undertaken within the scope of wild animal protection activities may cause bodily injury and property damage.

Wild animals mostly live in forests considered *res nullius* (lit: nobody's property)⁴²⁻⁴³. Plants, animals, bacteria, fungi and all other living things in forests should, therefore, be considered *res nullius* as well. This approach will help us determine who is to be held liable for damages caused by wild animals.

The Law on Land Hunting No. 4915 was adopted to protect game and wild animals and their habitats and to regulate hunting. With this law, areas forming a diverse habitat for various plant and animal species are declared as wildlife protection and improvement areas and are given protected status. There are currently 80 wildlife protection and improvement areas in Turkey.

In Turkey, there are three groups of wild animals in terms of protection status; those protected by international conventions, those protected by the Ministry and those that are not protected. Wild game animals in need of protection designated by the Ministry are protected by the Central Hunting Commission while wild nongame animals and other species are protected by the Ministry.

The Ministry determines the principles of the exploitation of wild animals during protection, of protection

against dangerous animals and of temporary hunting. In the event unprotected wild animals overpopulate to such an extent that they become a threat to agricultural areas, livestock and protected wild animals or in the event it is determined that they carry infectious diseases, then the Ministry may allow a certain number of them to be hunted in accordance with principles and procedures.

The first step regarding cases for damages caused by protected wild animals is the identification of the place where the damage occurred. The court must determine whether the wild animal caused bodily injury or property damage in its own habitat or out of its own habitat, that is, in a residential area.

Wild animals live mostly in forests on high and steep areas where human access is limited. Though this is especially true for some rare species such as lynx, it is not the case for all wild animal species.

Wild animals are mostly encountered in the wilderness such as agricultural areas, wetlands, steppes and highlands, and sometimes along highways and railways, in home and school yards and public parks⁴⁴. Therefore, it does not matter whether damages caused by protected wild animals occur in or out of the forest as not all of them live in the forest.

The administration should take necessary measures to keep protected wild animals away from residential areas. Over the last 40 years, wild-fruit trees in forests have been cut down uncontrollably, resulting in significant damage to wildlife⁴⁵.

Wild animals, such as bears and pigs, have been observed in human settlements in recent years. Due to destruction of natural habitats and lack of food, wild animals venture into villages and farmland, even wander through villages at night and climb to the tops of fruit trees⁴⁶.

The failure of the administration to prevent unauthorized cutting of trees or to take into account the ecological repercussions of forestry activities such as release cutting, clearcutting⁴⁷, shelter wood cutting and improvement and salvage cutting causes the destruction and disappearance of wild animal habitats⁴⁴. The administration is also responsible for the task of feeding protected wild animals. If it is not carried out properly, wild animals are likely to intrude into human habitats and agricultural fields.

It can be argued that the forest administration is liable through negligence on the part of its officers or servants for the destruction and disappearance of wild animal hab-

itats and for any loss or damage caused by wild animals intruding into human habitats and agricultural fields.

People who engage in poaching are subject to a hefty administrative fine. On the one hand, if they kill wild animals to ward off potential damages to their crops and properties, they are subject to an administrative fine, on the other hand, if they do not kill wild animals intruding into their habitats and fields, they suffer damages to crops and livestock.

The administration should compensate for damages suffered by low-income village communities already deprived, owing to hunting ban, of the opportunity to prevent the damage resulting from wild animal attacks that occur in residential areas or agricultural fields.

4. Factors Affecting Administrative Liability for Wild Animal Attacks

4.1 Wild Animal Attacks in the Forest or in Animals' Own Habitats

The law contains numerous articles such as Articles 17 and 21 of the Forest Law No 6831 that allow real and legal entities to benefit from forests in different ways within the permission of the forest administration. There are also some provisions that impose restrictions such as unauthorized accommodation in forests. There are, however, no regulations that sanction trespassing forests.

Animal husbandry, transhumance, educational, tourism activities etc. are carried out under legal authorization. Can the administration be held liable for pecuniary and non-pecuniary damages caused by wild animal attacks that occur outside of the forest during the aforementioned activities?

99 percent of the forests in Turkey are state property and the vast majority of wild animals live in them. Since there are no regulations that sanction trespassing forests, the administration is liable for damages caused by wild animal attacks that occur either in or outside of the forest. Strict liability can be imposed on the administration for damages suffered by victims due to attacks outside of the forest by wild animals living in the forest. Does it, however, also apply to damages caused by wild animals living outside of the forest? Wild animals are protected either pursuant to a protection order issued by the administration or an international convention signed by the state. It therefore

does not matter whether the damage occurs in or outside of the forest. The administration should be liable for all damages that occur in and outside of the forest. However, in the event of a wild animal attack resulting from provocation on the part of the victim, strict liability may not be imposed upon the administration for the damages.

4.2 Regulations Prohibiting the Carrying of Firearms and Ammunition in Forest

The regulations include provisions that restrict people from taking measures to protect themselves from wild animal attacks in the forest. The unrestricted sale of firearms is prohibited in Turkey. Civilians must obtain a firearms license granted by the administration to lawfully purchase and possess firearms. Besides, not every applicant is issued with a firearms license.

Article 6 of the Law on Land Hunting bans the use of automatic or semi-automatic pump action shotguns and un-grooved rifles, and air rifles and air guns with a magazine capacity of more than 2 for hunting. The rationale behind this regulation is to keep the number of bullets to a minimum based on the logic that the fewer the bullets, the fewer the number of protected wild animals killed.

In our opinion, the law stating that „a person shall be allowed to load no more than two cartridges ready to fire in the chamber at any one time, even though the person in question is the licensed firearm holder for that firearm is wrong because it is not sufficient for people to prevent damage to their lives or property even in the case of self-defense. First of all, in the case of an animal attack, could one shoot the animal by using only two bullets? Even if the bullets hit the target, would it be enough to save oneself from the animal attack? Is a wild animal attack never perpetrated by more than one animal at a time?

The legal restrictions mentioned above are used as arguments to impose liability on or aggravate the liability of the administration. In addition, not everybody living in or outside the forest has a firearm that they can use in the event of a wild animal attack. Even if they had a firearm with them, not all of them would be able to handle it properly and effectively, and some might not even know how to handle it at all.

The lack of trespassing laws restricting public access to forests but the presence of regulations restricting firearms and ammunition in forests result in the imposition of liability on the administration for property damage and bodily injury caused by wild animal attacks.

5. Results and Discussion

5.1 Judicial Decisions on Damages Caused by Protected Wild Animals

Article 169 of the Turkish Constitution stipulates that all forests shall be under the care and supervision of the State. State forests shall be managed and exploited by the State in accordance with the law. Acts and actions that might damage forests shall not be permitted.

The Forest Law No 6831 defines forest as tree and woodland communities, which grow naturally or are grown by human efforts, together with their lands. However, in the broad sense of the term, forest is defined as a unity of life consisting of various types of trees, shrubs, plants, bacteria, microorganisms and game animals living in perfect harmony⁴⁸.

Forest does not only consist of trees, but all wild animals and plants living in it are also part of its ecosystem. Consequently, the State is responsible for the protection of forests and wild animals, the majority of which are under its care and supervision, and is liable for any loss or damage resulting from wild animal attacks that occur outside forest areas.

Having previously functioned as a supreme court, the Supreme Military Administrative Court (SMAC) has been reorganized as a chamber of the Council of State with an amendment to the Constitution in 2016. The 2nd Chamber of the SMAC has issued a ruling imposing strict liability on the administration for damages caused by a wild animal, whose status of protection was not unequivocally settled (Date: 28.09.1994)⁴⁹. As a result of the investigation regarding compensation for losses suffered by the relatives of a soldier who was killed during night watch by a wild animal, the court has ruled that the State compensate the relatives for the losses for the following reason: The victim's face was seriously disfigured probably due to a wild animal attack leading to respiratory and circulatory arrest resulting in death due to bleeding. The fact that the incident occurred during the execution of public service suggests a causal relationship between the service and the damage. It is obvious that the service itself poses a danger to both those concerned and third parties.

By force of the principle of risk expressed as „since benefits of such dangerous services provided by the service itself or by tools and equipment belong to their owner, then losses and/or damages caused by thereof shall also belong to the owner in question,” the adminis-

tration, the owner of the public service, shall be liable for the loss or damage suffered by the plaintiffs. The deceased was the victim of a wild animal attack on a winter day in a building close to the forest area where wild animals crossed frequently. The death of the deceased was, therefore, entirely due to the cause and effect of the duty that the victim was in charge of performing as a soldier. It has, therefore, been concluded that the owner of the service shall be liable for the loss or damage suffered by the plaintiffs based on the general principles of administrative law, and on equity and conscience.

The heirs of a person who had been attacked and killed by a bear while working on his own land outside the forest filed a compensation lawsuit against the Administrative Court of Erzurum. The Court concluded that the Ministry of Forestry committed negligence by failing to fulfill its duty of protection and held the administration liable for compensation for the damages suffered by the heirs of the victim (File No: 2014/187, Decision No: 2015/560, Dated: 15.05.2015). The legal process is, however, still in progress.

The Court of First Instance imposed liability on the administration due to negligence. This type of liability requires proof that the administration is at fault. However, strict liability does not only not require but also not search for proof that the administration is at fault to hold it liable for damages. The decision of the court may, therefore, be overturned on the grounds that the administration should be held liable not for negligence but for strict liability.

5.2 Discussion

On what grounds should liability be imposed on the administration for property damage and bodily injury caused by wild animal attacks, and would it be right to do so? It depends on from which perspective we look at it; people-oriented or administration-oriented. From a people-oriented perspective, liability should be imposed on the administration.

It is the duty of the administration to protect wild animal habitats and to ensure that wild animals have access to food sources and clean water. From this perspective, it should be acknowledged that the administration, which protects wild animals but fails to protect their habitats, is at fault for indirectly causing wild animals to attack people, and therefore, is liable for property damage and bodily injury suffered by victims or their relatives.

Determining liability requires a systematic and holistic approach. Instead of imposing fault-based liability on the administration, which would then seek recourse against tortfeasors, strict liability should be imposed within the framework of balancing of sacrifices on the administration for the damage caused by dangerous activities that it has carried out, and, in this way, the burden for the damage can be held by the whole society.

If a wild animal attack is not related to the objective defect or malfunction of the establishment, organization and operation of a service carried out by the administration, then liability cannot be justified on the basis of negligence. However, in the judicial decision stated before, the court held the administration liable for the damages suffered by the heirs of a victim who had been attacked and killed by a bear.

The plaintiff has the burden of proving negligence on the part of the administration, which is not always possible. It is, therefore, more reasonable, in accordance with strict liability and balancing of sacrifices principles, to hold the administration liable for damages caused by wild animal attacks.

It does not seem possible to hold the administration liable in accordance with the principle of risk of strict liability either, because for that to happen, the damage must be caused by dangerous activities carried out by the administration or by tools and equipment that it uses.

6. Conclusion

The protection of endangered wild animals by international conventions and regulations in domestic law is of paramount importance for the conservation of biological diversity in the world and Turkey. However, in recent years there has been an increase in the number of cases where protected wild animals intruded into residential areas and caused property damage and bodily injury mainly due to destruction of natural habitats and food resources, and overpopulation. The principles of ecological silviculture should, therefore, be taken into consideration when benefiting from wildlife resources and the protection of animal habitats and food sources should be prioritized in forest interventions.

The administration is liable for damages caused by wild animals under its protection. In recent times there have been some lawsuits filed against the administration, which was deemed liable by the courts. Regulations on

liability for damages caused by wild animals should be introduced to the law. The provisions in the legal regulations in force only concern the prohibition of activities that might pose any harm to wild animals. The lack of a general regulation on compensation for property damage and bodily injury caused by wild animals may set off a reaction to the laws protecting wildlife in the future.

Compensation by the administration of damages caused by wild animal attacks will not only help people support the laws and regulations protecting wildlife but also prevent their further victimization.

On the one hand, activities carried out by the administration make positive contributions to some people's lives; on the other hand, they cause extraordinary damage to others. Here, the administration is liable for those damages in accordance with the principle of strict liability imposed based on the principle of balancing of sacrifices. This principle not only relieves the plaintiff from the burden of proving negligence on the part of the administration but also prevents the administration, due to the absence of fault, from seeking recourse against tortfeasors.

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