

Liability for damage caused by and to an animal

Abstract

In this paper, entitled "Liability for damage caused by and to an animal", I focus on the analysis of the private law framework of attributability and liability for injury caused by and to animals, i.e. the concept of the property of a "thing" that is to some extent uncontrollable. For the sake of comprehensiveness, the issue is also briefly outlined from a public law perspective.

This paper aims to provide a comprehensive and expert summary of information on current domestic legislation, to mention possible shortcomings thereof, and to provide the reader with an overall picture through a number of examples and theoretical situations.

The paper is divided into six chapters. The introduction deals with the animal as a concept in the legal sense and also defines the terms game and animal, as they are fundamental to the whole paper. Understanding the terms and distinguishing them from the subject matter is fundamental to understanding the issue. The following chapter is devoted to the Czech historical regulation of the concept of animal as its understanding changed in domestic civil law until the adoption of the current Civil Code.

In its main parts (the third, fourth and fifth), the paper focuses on the current legal regulation of liability for injury in terms of injury caused by and to an animal. In particular, it focuses on the creation of liability, the liable subject and the possibilities of compensation for material and immaterial damage caused.

Compensation for injury caused by an animal and compensation for injury to an animal are provisions special to the general rules on compensation for damages. This means that they take precedence over the general rules.

The animal as property is also an important aspect. However, not all animals can be acquired as property – public law provides for exceptions in which animals are regarded as property of no one and sets out the legal conditions for their acquisition. The question of ownership is also crucial for the subsequent determination of liability. If the animal has an owner, the general civil law rules on liability apply; in the case of an animal as the property of no one, the special rules on liability apply.

Liability for damage caused by an animal is strictly construed under the current Civil Code as strict liability, but this is mitigated by the possibility of liberation in respect of certain privileged domestic animals.

Animals are protected mainly under public law, but private law has provisions protecting animals as well – in general terms, the damage will be assessed according to the general rules, but the Civil Code provides for a special regulation on compensation in the event of injury to an animal, wherein the costs associated with the injured animal's healthcare must be reimbursed by the injuring party, even if they exceed the economic value of the animal. In the case of the public law provisions on the regulation of damage to game under the Hunting Act, compensation for damage has a mainly compensatory function. Criminal law then acts as a means of ultima ratio in the matter of damage caused to the animal.

Since the precursor of the current domestic legal regulation of the status of animals and liability for damages was the German Civil Code, the last part of the paper – the sixth part – deals with this regulation in German civil law in more detail and offers a brief comparison.

Animals, whether domestic, farm or wild, have accompanied man from time immemorial and it is therefore desirable that their status should be properly regulated by law. The current domestic legislation, and the tendencies that have been reflected in it over time, which not only change the status of the animal as such but also increase its protection, is therefore a fundamental and important reflection of the modern society in which we live.

Keywords: animal, liability for damages, Civil Code