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## LIABILITY FOR GAME ANIMAL DAMAGES

**Abstract:** The main aim of the article is to present topic of liability for game animal damages to crops in Poland. The article includes basic statistical data regarding both scale of damages caused by game animals and structure of paid hunting compensations. Furthermore, the author tries to characterize domestic regulations both defining entities responsible for compensating game animal damages and forming rules of determining, estimating and awarding hunting compensations.

**Key words:** hunting, hunting animal damages, hunting compensations, liability, law, regulations, Poland.

### INTRODUCTION

Game animal damages to crops are not rare occurrence. Over 60 thousand damages caused by game animals are registered each year in Poland [Explanatory memorandum 2016]. Occurrence of hunting damage is related to severe financial consequences charging defined entities, including tenants and administrators of hunting districts of event State Treasury itself. Average total value of annually paid hunting compensation is estimated at 68 million PLN [CSO 2016]. Such size of analyzed phenomenon shows that the topic of liability for game animal damages should be considered as a high-profile issue requiring further investigation

The main aim of this study is to present scale of game animal damages and structure of paid hunting compensations and to characterize adequate regulations. The article includes statistical data defining scale and structure of both occurred game animal damages and paid hunting compensations in Poland in years 2010-2015. The author also characterize domestic provisions forming principles of certain entities' liability for game animal damages to crops. It is worth mentioning here that domestic legislator, by means of newest amendments, have decided to modify significantly legal subject and procedural principles valid for over 20 years

### SCALE AND STRUCTURE OF HUNTING COMPENSATIONS IN POLAND IN YEARS 2010-2015

Table 1 contain statistical data regarding number of damages and court cases related to hunting compensations paid by tenants or administrators of hunting districts in years 2010-2014. Indicated data comes from explanatory memorandum to the draft Act on game animal damages and on amendment of Hunting Act [Explanatory memorandum 2016]. The analysis of data regarding number of registered damages leads to the conclusion that phenomenon of game animal damages has remained stable over defined period of years (with about 57-63 thousand registrations). Furthermore, the biggest decline in number of damage registration could be observed in years 2011-2013 and the most apparent growth was documented in years 2013-14. Growth or decline rates in listed periods wasn't significant and was estimated to -4% (2011-2012) and +5% (2013-2013) respectively. Stable level of registered game animal damages could be considered as favorable evidence of analyzed phenomenon as it proves that intensity of problem have not increased. Furthermore, indicator of the damages' number maintaining at comparable levels enables the responsible subjects to follow sound and effective financial policy under which they are able to anticipate future funds necessary for hunting compensations' expenses. However, stable number of registered damages could be considered as evidence of weak prevention against analyzed issue.

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Insignificant changes in number of registered damages may suggest that no efficient measures reducing scale of phenomenon had been applied in analyzed period.

Statistical data presented in table 1 may also characterize other significant issues related to liability for game animal damages done to agricultural crops. Taking into consideration numbers related to registered court cases, favorable for farmers rulings and relations between court cases and number of registered damages it should be stated that issue of judicial enforcement of compensation is a marginal problem. Barely 0,17% of all registered cases resulted in rulings favorable for farmers. Clearly, vast majority of judicial proceedings related to hunting compensations ends at prejudicial stage.

Table 1. Number of damages and court cases concerning hunting compensations in hunting districts leased by hunting clubs in Poland in hunting years 2010-2014

Specification	2010/2011	2011/2012	2012/2013	2013/2014	Average
Number of registered damages	60 059	57 715	60 657	63 162	60 398
Number of court cases	79	109	106	110	101
Number of cases won by farmers	27	36	29	20	28
Court cases ended in favor of farmers (%)	34,2	33,0	27,4	18,2	28,2
Percent of court cases (%)	0,13	0,19	0,17	0,17	0,17

Source: explanatory memorandum to the draft Act on game animal damages and on amendment of Hunting Act, Parliamentary document 327.VIII.

Table 2. Hunting compensations in Poland in years 2010-2016

Specification	2010/2011	2012/2013	2013/2014	2014/2015	2015/2016	Average
	<i>in thous. PLN (current prices)</i>					
Total	57376,2	68510,4	75278,0	67344,9	72939,6	68289,8
State Forests National Forest Holding	9939,6	11298,4	11618,0	9734,9	9792,6	10476,7
Agricultural Property Agency	586,6	-	-	-	-	-
Polish Hunting Association	46850,0	57212,0	63660,0	57610,0	63147,0	57695,8

Source: Forestry 2016, CSO.

Table 2 includes statistical data picturing structure and changes in value of hunting compensation paid by obliged entities in years 2010-2016 [CSO 2016]. Analyzing indicated issue it should be primarily noted that both total value of awarded compensations and value of compensations paid by particular entities did not remain at stabled and experienced apparent fluctuations. Period of years 2010-2014 could be characterized with apparent growing trend.



Significant decrease in value of compensations could be observed in another period (2014/2015), however in last of observed periods (2015/2016) there was apparent increase in value of awarded compensations (estimated to approx. 8%). At the same time, it should be highlighted here that total value of hunting compensations in analyzed period was shaped with general upward trend resulting in total growth in value estimated to 15563 thous. PLN regarding value documented in years 2010/2011 and 2015/2016.

Table 3. Hunting compensations paid from sources of the State Budget by voivodships in 2015

Voivodships	Total	For the damage caused by:			
		Wild boars, moose, deer, fallow deer and roe deer	Game species under year-round protection		
			Total	of which paid by:	
				Voivodship executive board	State Forests National Forest Holding
<i>in thous. PLN (current prices)</i>					
Polska ogółem	8172,8	3472,5	4700,3	4541,4	158,9
Dolnośląskie	20,9	20,9	-	-	-
Kujawsko-Pomorskie	63,4	51,4	12,0	-	12,0
Lubelskie	556,0	315,7	240,3	238,2	2,2
Lubuskie	274,1	274,1	-	-	-
Łódzkie	111,0	55,2	55,8	55,8	-
Małopolskie	101,1	101,1	-	-	-
Mazowieckie	1761,0	126,2	1634,8	1543,5	91,3
Opolskie	9,8	-	-	-	-
Podkarpackie	1875,0	1875,0	-	-	-
Podlaskie	2380,0	25,2	2354,6	2340,2	14,3
Pomorskie	23,5	23,5	-	-	-
Śląskie	87,2	87,2	-	-	-
Świętokrzyskie	11,1	2,0	9,1	9,1	-
Warmińsko-mazurskie	492,5	98,7	393,8	354,6	39,2
Wielkopolskie	179,4	179,4	-	-	-
Zachodniopomorskie	226,9	226,9	-	-	-

Source: Forestry 2016., CSO.

The biggest unitary growth in value of compensations was observed in period 2010/2011 when total value of paid hunting compensations increased by 11134,2 thousands PLN, i.e. by 19%. It is also worth mentioning that in the same period we could notice biggest unitary growth in value of paid compensations in cases of all obliged entities. Size of characterized growth was especially apparent in case of Polish Hunting Association (PHA) which was responsible for paying hunting

compensations in total value higher by 10362 thousands PLN (i.e. by 22%) in comparison to prior period. It is also worth highlighting here that PHA is also the biggest payer of hunting compensation, awarding approx. 85% of all due compensations related to game animal damages.

Analysis of data regarding both number of registered damages (tab. 1) and paid compensations (tab. 2) leads to conclusion that value of awarded hunting compensation is not related to number of registered damages holding specified entities accountable. As it is apparent, value of compensations increased repeatedly in given period regardless of relatively stable levels of registered game animal damages. Therefore, it can be stated that issue of game animals damages should be considered as qualitative rather than quantitative problem where higher total value of awarded compensation can result from lower number of determined factual elements.

Data presented in table 3 allows to conduct analysis of structure and territorial diversification of hunting compensation burdening the State Treasury. It leads to the conclusion that majority of damages observed in 2015 was caused by game species under year-round protections which were responsible for 58% of all compensations awarded from the State Treasury. It is also worth mentioning that competent voivodship executive boards turned out to be main body responsible for paying majority of hunting compensations. Almost 97% of compensations related to damages caused by game species under year-round protection was paid by these entities.

Analyzing territorial diversification of awarded hunting compensation it is worth noting that problem of game animal damages affecting the State Treasury's funds occurred in highest intensity in case of three voivodships – Podlaskie (responsible for 29% of paid compensations), Podkarpackie (23%) and Mazowieckie (22%). The Podlaskie voivodship was also responsible for highest value of hunting compensation paid for damages caused by game species under year-round protection (over 50% of all compensations in the category), while the Podkarpackie voivodship was liable for majority of compensation pair for damages caused by wild boars, moose, deer, fallow deer and roe deer (up to 54%).

#### **LEGAL FRAMEROWRKS CONCERNIG LIABILITY FOR GAME ANIMAL DAMAGES**

While studying legislation concerning liability for game animal damages caused to crops we should, in particular, study three listed below legal acts:

- Hunting Law Act of 13 October 1995,
- the Law amending the Hunting Act of 22 June 2016 and
- the Regulation of Minister of Environment on proceedings related to estimating damages and paying compensations for damages caused to crops.

Indicated legislation bot fully regulates problematic of determining parties liable for game animal damages and shapes principles of determining, establishing and awarding hunting compensations. However, it must be also noted that crucial amendment of Hunting Act entered into force on 1<sup>st</sup> January 2017. The abovementioned amendment significantly modifies such legal aspects as parties liable for game animal damages or principles of conducting inspections and estimations of damages. It also should be highlighted that given act has caused some transitional confusion as its part entered into force on 1<sup>st</sup> January 2017 and other part will be in force only from 1<sup>st</sup> January 2018.

#### **OBJECTIVE AND SUBJECTIVE SCOPE OF LIABILITY FOR GAME ANIMAL DAMAGES**

Objective scope of regulation has not experienced any significant modifications yet. The basis for liability of defined parties is conditional on:

- a) damages caused to agricultural crops by wild boars, moose, deer, fallow deer and roe deer and other game animals under year-round protection (art. 46.1 of Act 1995),
- b) damages caused during hunting (Art. 41.1 p. 2 of Act 1995 in the version applicable until 1<sup>st</sup> January 2018).



Only two abovementioned factual elements enable analyzed form of liability for game animal damages to be applied.

Subjective scope of regulation will be affected by more important and complex modifications. In actual legal situation (applicable until 1<sup>st</sup> January 2018) tenant or administrator of hunting district is considered as main liable party in all cases of damages caused to agricultural crops during hunting or by wild boars, moose, deer, fallow deer and roe deer by considered as main liable party (art. 46.1 of Act 1995). The State Treasury's liability is limited only to damages caused by game animals under year-round protection and for damages occurred on area not entering hunting districts (art. 50.1 and 50.2 of Act 1995). In such cases, the hunting compensation is paid by:

- a) State Forests National Forest Holding – for damages occurred on forest hunting districts and
- b) competent voivodship executive board - for damages occurred on field hunting districts and areas not entering any hunting districts (art. 50.2. p.1 and p.2 of Act 1995).

At the end of 2017 year, the above characterized principles of game animal damage will experience significant change. Starting from 1<sup>st</sup> January 2018, the State Treasury will be liable for paying majority of awarded hunting compensation. According to art. 46.1 of Act 1995 in version applicable from 1<sup>st</sup> January 2018, the State Treasury will be liable for damages caused to agricultural crops by wild boars, moose, deer, fallow deer and roe deer, including other game animals under year-round protection while tenants or administrators of hunting districts will be liable only for damages caused during hunting.

Hunting compensations burdening the State Treasury will be paid by competent voivodes and funds for this purpose will be provided from:

- a) the Compensation Funds – in case of damages caused on hunting districts with exception of damages caused by game animals under year-round protection and
- b) direct funds of the State Treasury – in other cases.

Subjective modification will also address subjects responsible for conducting inspection and damage estimation proceedings. In previous legal status only individuals appointed by tenants or administrators of hunting districts were responsible for game animal damage inspections and estimations. Starting from 1<sup>st</sup> January 2017, only bodies appointed by competent voivodes are entitled to conduct required inspections and estimations in all cases of damages caused to agricultural crops by wild boars, moose, deer, fallow deer and roe deer (art. 46a.1 of Act 1995). The competence of representatives of hunting districts' tenants or administrators has been limited only to inspections concerning damages cause during hunting.

#### **THE COMPENSATION FUND**

The abovementioned amendments also create the Compensation Fund which funds will be allocated in order to cover vast majority of occurred game animal damages burdening the State Treasury. As a purpose-fund, the Compensation Funds will be held subject to the Minister of the Environment who as the authorizing officer of funds will be responsible for managing and establishing annual financial plans (art. 50a.2 and 5 of Act 1995 in version applicable from 1<sup>st</sup> January 2018).

The Compensation Fund will be powered with revenues from:

- a) annual premiums paid by tenants and administrators of hunting districts,
- b) gifts and bequests,
- c) subsidies from state budget and
- d) other obtained profits (art. 50.4 of the Act 1995.).

As can be seen from the above aspects, legal situation of tenants and administrators of hunting districts will experience major change. Indicated bodies will be no longer directly responsible for paying hunting compensation but they will be obliged to pay annual premiums to 15 June of each



year (art.50b.1 and 2 of Act 1995). The contribution rate will be estimated by competent voivodes up to 15 May of each year and due premiums, under proper decision, can be paid in instalments (art. 50b.4 and 4 of Act 1995). Voivodes will not be free to set value of premium which value will be estimated as product of number of game animals planned to be obtained in given hunting years and flat rates for game animals (art. 50b.6 of Act 1995). Furthermore, value of contributions will be subject to cyclic growth proportional to percent of unachieved hunting plan in the year preceding the year of current premiums' estimation (art.50b.8 of Act 1995).

Such form of financial principles concerning hunting compensation can be concerned as rational solution. Instead of direct financial liability of tenants and administrators of hunting districts, more solidarity-based regulations is implemented. Central fund will cover costs of hunting compensations from premiums paid by all hunting districts. Such regulation may ease financial burden of hunting districts experiencing biggest number of damages in given year. It may be considered that such financial principles of hunting districts' tenants and administrators' liability will adopt form of solidarity ("janosikowe") contribution where hunting districts not experiencing severe damages will participate (indirectly) financially (through their premiums) in covering serious damages observed in other districts. Also the possibility of powering the Compensation Fund with state subsidies may be considered as a kind gesture towards hunting community in Poland. Depending on current policy of the government, such possibility may become another instrument of improving financial condition of hunting districts in Poland.

## CONCLUSION

Number of registered game animal damages remained at relatively stable levels and experienced only minor fluctuations in recent years. At the same time, only minor percentage of registered damages ended with court cases. Such low rate of court cases may suggest that proceedings concerning awarding hunting compensation are amicable, serviceable and objective and usually end with voluntary payment of compensations by liable parties. It should be also noted that the total value of paid hunting compensation has increased in analyzed period and that Polish Hunting Association was the main liable party. However, it would not be justified to link number of registered damages (which remained at relatively stable levels) with value of awarded compensations (apparent upward trend). Moving to the field of the State Treasury's liability, majority of compensations paid in 2015 covered damages caused by game animals under year-round protection and the problem of game animals damage affected especially three voivodships - Podlaskie, Podkarpackie and Mazowieckie.

Considering legal issues forming principles of liability for game animal damages to agricultural crops, we should primarily focus on importance and size of implementing amendments. The amendment of the Hunting Act, which was introduced in 2016, has revolutionary character and attempts to implement crucial changes of previously functioning legal order. Shifting the direct liability burden from hunting districts to the State Treasury may be considered as significant kind gesture towards hunting community in Poland. New legislation, which, to a large extent, will come into force on 1<sup>st</sup> January 2018, may seriously improve financial condition of hunting districts in Poland.

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