

## Liability for Damage Caused by Domestic and Wild Animals in Turkish Law\*

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### Abstract.

The Turkish Code of Obligations holds pet owners objectively liable for any damage caused by their pets regardless of fault on the grounds that they failed to carry out their supervisory duty. There is, however, no regulation on compensation for damages caused by wild or stray animals. The legal gap in this field is filled by case laws. The aim of this study is to compare pet owner liability regulated by private law as strict liability and state liability for damage caused by wild animals protected by national legislation and international conventions. The research material consists of current legislation, and judicial and administrative decisions on property damage and bodily injury caused by animals. Tort claims for damages caused by pets and wild animals differ by statute of limitations, judicial remedy, the law on which the case is based, and strict liability principles. Pet owner liability for damage caused by the pet is based on strict liability in private law while administrative court decisions hold the administration liable based sometimes on strict liability and sometimes on negligence.

**Keywords:** Pet owner liability; Pets; Wild animals; Strict liability; Compensation

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## Tanggung Jawab atas Kerusakan yang Disebabkan oleh Hewan Domestik dan Liar Dalam Hukum Turki

### Abstrak.

Kode Kewajiban Turki meminta pemilik hewan peliharaan bertanggung jawab secara obyektif atas kerusakan yang disebabkan oleh hewan peliharaan mereka, terlepas dari kesalahan yang dilakukan. Adapun alasan yang diajukan karena pemilik hewan gagal menjalankan tugas pengawasan. Namun, tidak ada peraturan tentang kompensasi atas kerusakan yang disebabkan oleh hewan liar atau tersesat tersebut. Tujuan dari penelitian ini adalah untuk membandingkan kewajiban pemilik hewan peliharaan yang diatur oleh hukum privat sebagai kewajiban yang ketat dan kewajiban negara atas kerusakan yang disebabkan oleh hewan liar yang dilindungi oleh undang-undang nasional dan konvensi internasional. Materi penelitian terdiri dari undang-undang saat ini, dan keputusan yudisial dan administratif tentang kerusakan properti dan cedera tubuh yang disebabkan oleh hewan. Klaim kerugian atas kerusakan yang disebabkan oleh hewan peliharaan dan hewan liar berbeda menurut undang-undang pembatasan, upaya hukum, hukum yang menjadi dasar kasus, dan prinsip tanggung jawab yang ketat. Tanggung jawab pemilik hewan peliharaan atas kerusakan yang disebabkan oleh hewan peliharaan didasarkan pada tanggung jawab yang ketat dalam hukum privat, sementara keputusan pengadilan administratif memegang tanggung jawab administratif terkadang berdasarkan tanggung jawab yang ketat dan terkadang pada kelalaian.

**Kata kunci:** Kewajiban pemilik hewan peliharaan; Hewan peliharaan; Hewan liar; Tanggung jawab yang ketat; Kompensasi

### Ответственность за ущерб, причиненный домашними и дикими животными в турецком законодательстве

### Аннотация.

Обязательственный кодекс Турции возлагает на владельцев домашних животных объективную ответственность за ущерб, причиненный их домашними животными, независимо от причиненного им вреда. Выдвинутые причины заключались в том, что владелец животного не выполнил свои обязанности по надзору за ним. Однако нет никаких правил относительно компенсации ущерба, причиненного дикими или бродячими животными. Целью этого исследования было сравнить обязанности владельцев домашних животных, регулируемые частным правом как строгое обязательство, и обязанности государства за ущерб, причиненный дикими животными, охраняемыми национальными законами и международными конвенциями. Материалы исследования состоят из действующего законодательства, судебных и административных решений в отношении имущественного ущерба и телесных повреждений, причиненных животными. Иски о возмещении ущерба, причиненного домашними и дикими животными, различаются в зависимости от закона об исковой давности, установленного закона, закона, на котором основано дело, и строгих принципов ответственности. Ответственность владельца домашнего животного за ущерб, причиненный домашним животным, основана на строгой ответственности по частному праву, в то время как решения административных судов предусматривают административную ответственность, иногда основанную на строгой ответственности, а иногда на небрежности.

**Ключевые слова:** Обязанности владельцев домашних животных; Домашнее животное; Дикое животное; Строгая ответственность; Компенсация

## A. INTRODUCTION

Regulations in force recognize animals as objects of law that need protection rather than subjects of law (Yılmaz, 2006). Animal law is based on the protection of animals, not on their rights. In the relationship between people and animals, it is the former that is protected (Aybay & Hatemi, 2009). Law does not distinguish between animate and inanimate things and sees animals as property. Animals are important elements of the environment (Keleş, 2013; Güneş, 2009). The Crimes Against the Environment section of the Turkish Penal Code guarantees the rights of animals to live in a healthy environment, and the right to maintain their generations and natural characteristics (Dönmez, 2013).

The concept of animal ownership varies from time to time and from society to society. There is a large population of wild animals, the majority of which are not domesticated (Koçhisarlıoğlu & Söğütlü Erişgin, 2013). Domesticated animals kept for company, protection, and/or entertainment are referred to as pets. Animals without shelter and not under the control of any owner or guardian are referred to as stray animals. For an animal to be adopted, it should be ownerless, abandoned, or unclaimed (Ertaş, 2018). According to Law No. 5199 on Animal Protection, livestock animals are animals that are cared for and raised for the exploitation of their products and services.

Wild mammals, birds, reptiles, and other creatures and non-cultivated plant species living in their natural habitats constitute the wildlife (Mol, 2006). Article 3 of the Law on the Protection of Animals No. 5199 defines wild animals as undomesticated and uncultured vertebrate and invertebrate animals living in their natural habitats. Wild animals living in nature are considered *res nullius* (lit: nobody's property) (Ashton-Cross, 1953), and the first to claim ownership of a wild animal is regarded as its rightful owner (Ayan, 2016).

## B. METHODS

This study uses a qualitative research method with a comparative approach. The data used comes from realities in the field by conducting research and direct interviews. This study compared pet owners' liability for damages caused by their pets regulated by the Turkish Code of Obligations (TCO) and state liability for damages caused by wild animals protected by national legislation and international conventions.

## C. RESULT AND DISCUSSION

### 1. Historical Background of Liability for Damage Caused by Animals

Roman law has introduced important regulations on owners' liability for any damages caused by their animals. The regulations that hold the owner of an animal liable for damage caused by the animal have been valid since the Law of the Twelve Tables (Jackson, 1978).

Roman law classified animals as wild and domestic (Ashton-Cross, 1953). The owner of a domestic animal had an obligation to keep the animal in good condition and to prevent it from behaving in a way that would harm others. Roman authorities enforced the *Actio de Pauperie* which held the owner of a domestic animal (initially quadrupeds) liable for damage caused by the animal. The owner was obligated either to give the animal that caused the damage to the victim or compensate for the damage (Umur, 1975). In later periods, all domestic animals were taken into the scope of *Actio de Pauperie* including animals such as two-legged birds, geese, and ducks based on the case of *actioutilis*, which is a case type created by praetor, and on the views of Classic Jurists, who usually added a *fictio* to the *intentio* section of the case formula to expand the scope of application of a *ius civile* case and sometimes a *praetor* case (Umur, 1975).

Roman law regulates liability for damage caused by wild animals in more detail than that caused by domestic animals (Nicolas, 1958). All wild animals were addressed within the context of Edictum de Feris (Yuce, 2017). Different from the *Actio de Pauperie*, the Edictum de Feris prohibits the presence in public spaces of wild animals considered dangerous and inflicts punishment in case of non-compliance with this prohibition (Kucuk, 2013). The scope of application of the Edictum de Feris was expanded with the introduction of different animals from different continents and their use in games. In the period of classical law, the owner of a wild animal such as a wolf, bear, panther, and lion started to be held liable for damage caused by the animal. According to this regulation, the wild animal owner is held liable for damage caused by the animal regardless of whether or not the animal was tethered or running around loose.

The owner of a wild animal was held liable for damage caused by the animal regardless of whether or not he/she was the rightful owner or was capable of preventing the damage from occurring. This liability was based not on fault, but possession and supervisory responsibility. The owners of animals such as horses, mules, and sheep, which are more docile than wild animals, were held liable for damage caused by their animals on the grounds of ownership. Roman law, therefore, started considering wild animal owners to be liable for damage

caused by their animals, which is the basis of the concept of “strict liability” regulated by the TCO (Türkoğlu-Özdemir, 2006).

The legal system of our country under the Ottoman State was based on orfi (customary) law and canon (seri'at) law. The Holy Quran contains statements regarding animals in several surahs (En Nahl [16]: 5-8, Et Tekvir [81]: 5).

Religious orders and the practices of the Prophet's companions stipulate that people can protect themselves against animals attacking them, otherwise, it is not allowed to kill an animal without a just cause (Nesâî, Sünen, Dahâyâ, 42, 4446; Ahmed b. Hanbel, al-Musned, IV, 389, 19488.) In Islamic law, provided that there is a causal link enough to hold the animal owner responsible for the damage caused by pets under private property, the compensation of the damage is charged to the owner of the pet; however, if there is not enough causal link, the owner of the animal is not held responsible (Bardakoğlu, 1978).

## **2. Liability of Animal Owners for Damage Caused by Their Animals in Private Law**

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, fault, or imprudence (Armagan, 1997) Based on “fault,” liability in private law has both objective (unlawfulness) and subjective aspects (recklessness, imprudence, and negligence) (Evren, 2011).

The TCO regulates fault-based liability as a general rule. Part 2 of Section 1 of the TCO titled “Tort Obligations” contains a regulation on fault-based liability, which is the general principle of liability law (Article 49 of the TCO). The regulation holds that “a tortfeasor is liable for all consequences resulting from his/her tortious activities resulting in damage to another person.” Here, liability is based on fault, and therefore, this type of liability is referred to as “fault-based liability.”

The recognition of strict liability in private law is a result of the transition from the liberal law state, which adopts the principle of fault-based liability, to the social law state based on the principle of justice and equity and social development. Pet owners' liability for damage caused by their animals is strict. A person who uses and benefits from an animal is liable for all consequences of damage caused by the animal.

Article 67 of the TCO regulates the liability of animal owners. This type of liability is based not on fault but objective negligence (Aybay, 2011). Three

subsections of Article 67 of the TCO regulate this type of liability. The first subsection holds 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. According to this subsection, a person who has, in law or, power over an animal, assumes the responsibility for its care and supervision, and benefits from it is liable for any damages caused by the animal (Eren, 2018; Antalya, 2017; Tandogan 1981; Oguzman & Oz, 2012). Animal ownership does not have a direct relationship with the right of ownership, which means that an animal owner may be either a natural or a legal person (Eren, 2018). Therefore, an animal owner can be a proprietor who\_has, in law or fact, power over the animal or can be persons who have the exclusive right to use and benefit (usufructuary, leasehold, lending rights, etc.) it.

The second subsection states that in the event, the animal owner proves that he/she has acted in objective due diligence to prevent the occurrence of the damages concerned, no liability shall be imposed (Oguzman & Oz, 2012). Unlike the old law, the new regulation does not contain a proof of innocence because the law's preamble states that in the event, innocence is proved,\_the causal relationship between the damage and objective due diligence disappears, and therefore, liability cannot be imposed following the general principles of liability law (Akaratepe, 2012).

The third subsection holds that in the event, the animal has been frightened by another person or by the animal of another person, the owner of the frightened animal shall have the right of recourse against the person in question." Here, a third-person violates the animal owner's possession and causes damage. This act committed by the third person is subject to tort liability according to Article 49 of the TCO. The victim can file an action for damages against the animal owner or third party or both under the principle of joint liability (Eren, 2018).

According to Article 68 of the TCO on the liability of animal owners, in the event, an animal causes damage to 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 (if the animal is likely to cause greater damage to the property or if it continues to damage the property). "The article also states that the possessor of the property should inform the owner of the animal and that if he/she does not know who the owner of the animal is, then he/she should do whatever is necessary (for example, informing law enforcement) to find the owner of the animal.

The expression “damage to an immovable property” refers to any damage to plants, animals, products, temporary or permanent structures, and even people on that property. According to the law, the possessor of the property has the right to restrain or confine the animal that caused the damage if conditions and circumstances justify such a measure, that is, if the animal is likely to cause greater damage to the property or if it continues to damage the property (Kılıcoglu, 2010). According to the Universal Declaration of Animal Rights (UDAW), “if an animal has to be killed, this must be instantaneous and without distress.”

In the event, an animal enters upon private land and causes damage, the owner of the land has the right to kill that animal. This regulation is criticized as it prioritizes economic interests over animals' right to life (Yılmaz, 2006). However, Article 151 of the Turkish Criminal Code punishes someone who kills an animal without a justified reason or reduces its value. However, the Code does not apply to abandoned pets or wild animals.

The TCO regards the liability of animal owners as diligence liability (Antalya, 2008). Despite the Supreme Court's decision on the unification of conflicting judgments (Dated: 27.03.1957, No: 1/3), the dominant view is that the liability of animal owners is not risk liability (Tandogan, 1981; Oguzman & Oz, 2012). The failure of an animal owner to provide care and supervision is nothing but a condemnable act. The owner of an animal may be exonerated from liability for damage inflicted by his/her animal if he/she proves that he/she has acted in due diligence to prevent the occurrence of the damage (Yavuz, 2008). Therefore, the liability of animal owners is a strict liability to which proof of innocence can be admitted (Kaleli, 1978).

The fact that the TCO authorizes judges to impose compensation does not violate the actual law. This is not compensation in the classical sense but is a consequence of the liability of equity, which is left to the discretion of judges (Ozbek & Dogan, 2007). The owner of an animal is liable for damage caused by the animal regardless of his/her negligence. However, for liability to arise, the animal should be under the supervision and control of that person, there should be a causal relationship between the damage and the act, and the damage should be due to the animal's instinctive behavior or an external factor. This might be an abrupt behavior or a reaction to someone else (kicking, pecking, biting, scratching, jumping, etc.). However, the owner of the animal may be exonerated from liability for damage inflicted by his/her animal, if he/she proves that he/she has acted in due diligence to prevent the occurrence of the damage. The compelling reason also applies to cases of gross negligence on the part of a

third person or victim. If the animal has been frightened or provoked by another person, the owner of the animal has the right of recourse against the person in question (Eren, 2018).

Some examples of strict liability are a horse kicking a person petting it, an ox goring, a horse kicking due to mosquito bite, a horse rearing up due to the noise of a motorcycle passing by, etc. However, if an animal causes damage due to a person's action, for example, a hansom cab driver misleads the horses and has an accident, that is, the damage occurs due to the acts of a person, therefore, the person who leads the animal to cause damage is subject to tort liability following Article 49 of the TCO. The animal doesn't need to come into contact with the victim for the presence of a causal relationship between the damage and the act just like in cases such as a child who is afraid of a barking dog runs to the road and a car hits the child and kills him.

Animal owners are not liable for their animals' noise and odors according to the TCO. However, if an animal's noise or odor is causing damage, Article 730 of the Turkish Civil Code holds the owner of the animal liable for the damage (Eren, 2018). The Turkish legal system holds pet owners liable for their pets' actions that might disturb neighbors. The liability for damage caused by domestic animals varies according to the place where the damage occurred (Uckan, 2013). According to the decision of the 14th Civil Chamber of the Court of Cassation (File No: 2011/1699, Decision No: 2011/3284, Dated: 15.3.2011), tolerance for unpleasant situations such as odors and feces of animals is higher in villages than in cities. Pet owners are liable for their pets' actions that might cause damage or disturbance to neighbors.

### **3. Administrative Liability for Damages Caused by Wild Animals**

There are numerous international conventions on the protection of nature and wildlife signed by Turkey. These conventions aim to protect animals and their habitats. Legal regulations impose sanctions only against acts of violence that may cause harm to wild animals.

Wild animals sometimes cause damage to people and their property. 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 damage to people, their property, and crops. The regulations in force do not address compensation for damage caused by wild animals. Regulations prohibiting any action that might cause damage to wildlife species, and procedures for compensation for damage caused by wild animals



fall within the scope of public law. The issue of liability and compensation for damage caused by wild animals has become a recent issue of concern in judicial decisions in Turkey.

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 consideration (Yasin, 2015). However, the concept of fault in private law cannot be the basis of the liability of the administration consisting of legal persons and cannot be applied to it (Armagan, 1997). This liability is based on the Code of Obligations and the Civil Code and is enforced under the roof of the mandatory provisions of the Constitution to the extent that the law complies with administrative law (Akyilmaz, Sezginer & Kaya, 2018).

Administrative liability is the obligation of public authorities to compensate damages resulting from acts and actions (Gulan, 1988) which they are obliged to fulfill (Atay, Odabası & Gökcan 2003) Full remedy actions regarding the administrative liability for damages are based on either fault-based liability or strict liability.

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 liability (Akyilmaz, 2000). The neglect or failure on the part of the administration to fulfill its duties specified by law constitutes negligence (Eroglu, 1985). Concerning 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 (Yıldırım, Yasin, Kaman & Özdemir, 2009). 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.

To determine administrative liability, full remedy actions first investigate whether there is a neglect of duty, and in the absence thereof, they decide on whether strict liability principles should apply. The Council of State decides to

impose either fault-based or strict liability depending on the cause and extent of damage incurred instead of concluding in light of certain rules (Tan, 2018). The decisions of the Council of State, therefore, show that strict liability principles are not based on a codified system with a consensus (Caglayan, 2009). 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 administration. However, this risk in question should be exceptional and of a serious nature (Atay, Odabası & Gökcan, 2003).

In the event the administration cannot be held accountable on the grounds of fault-based liability and risk-liability, it can be held liable based on 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 accidents.

Today, the State is obliged to ensure public order through law enforcement by preventing damages to people and their properties. The task of protecting forests and various species of plants and animals inhabiting them is carried out by forest law enforcement, which is a special administrative law enforcement unit (Guloglu, 2010).

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 conventions (Head of Wildlife Department, 2018).

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 activities of the administration to protect wild animals may cause damage to people and their property. The administration should, therefore, compensate for damages inflicted by wild animals.

Most wild animals live 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.

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 following the law..." 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.

Wild animals mostly live in forests regarded as *res nullius* (lit: nobody's property) (Gulan, 1999). 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.

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 schoolyards, and public parks (Evcin, 2013). 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.

It can be argued that the forest administration and personnel in charge are liable through negligence for the destruction and disappearance of wild animal habitats and any loss or damage caused by wild animals intruding into human habitats and agricultural fields. 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, clearcutting, shelterwood cutting, and improvement and salvage cutting causes the destruction and disappearance of wild animal habitats. 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. 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.

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 2<sup>nd</sup> 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). As a result of the investigation regarding compensation for losses suffered by the relatives of a soldier who was killed by a wild animal during the night watch, 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 a 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. 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 administration, 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 equity and conscience.

The Court's decision, which refers to the principle of risk and holds the administration liable, is unreasonable because for the administration to be held liable, the damage should be caused by the activities that the administration carries out or the means that it uses.

The heirs of a person who had been attacked and killed by a bear while working on his 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 because the administration should be held liable not for negligence but strict liability because 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 based on negligence.

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. However, if the wild animal attack was a result of the victim's provocative behavior, then strict liability may not be imposed upon the administration.

The regulations include provisions that restrict people from taking measures to protect themselves from wild animal attacks in the forest. Article 6 of the Law on Land Hunting allowing people to load no more than two cartridges ready to fire in the chamber at any one time is not reasonable because it is not sufficient for people to prevent damage to their lives or property even in the case of self-defense.

#### **4. Animal Owner Liability and State Liability**

There are differences between animal owner liability and state liability. Unlike contemporary law, Roman law recognizes the animal owner as of the defendant. If the animal has a new owner, the case must be brought against the new owner of the animal. However, the defendant is liable for damages caused by the wild animal, even if he/she is not the owner and whether or not he/she was at fault. Today, the case is brought against whoever is the owner of the animal at the time of the damage inflicted by the animal.

Today, the animal owner may be exonerated from liability for damage inflicted by his/her animal, if he/she proves that he/she has acted in due diligence to prevent the occurrence of the damage. Therefore, the liability of the animal owner is a strict causal liability to which proof of relief can be admitted. In Roman law, the animal owner should either deliver the animal that caused the damage to the victim or compensate for the damage that he/she suffered. On the other hand, the presence of a causal relationship between the damage and the act committed by the administration should suffice to hold the administration strictly liable for the damage. This is a complementary liability concerning public order and mostly applied in compensation cases for permanent damages that are not caused by accidents.

People can kill animals to protect themselves, and their land and animals, however, this must be instantaneous and without distress. Article 151 of the Turkish Criminal Code punishes someone who kills an animal without a justified reason or reduces its value. However, the Code does not apply to abandoned pets or wild animals. In the event a protected wild animal is unjustly killed, it is regarded as an offense subject to a fine.

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 about compensation for damages or injuries caused by protected wild animals. However, the decisions of the Council of State show that strict liability principles are not based on a codified system with a consensus. The issue of liability for damages caused by wild animals has become a recent issue of concern in judicial decisions. This is because the protection of wild animals has become the subject of legal regulations only recently.

In the national legislation, only the TCO regulates pet owners' liability. However, international conventions and national legislation do not contain any regulations on liability for damages caused by wild animals, and the gaps in existing laws regarding this issue are filled by case laws.

According to private law, a case against a pet owner must be brought at the Civil Court of Peace or in the Civil Court of First Instance, that is, in judicial jurisdiction, depending on the severity of the damage. To bring the case, those who caused the damage should be found out and the damage should be actionable. According to Article 72 of the TCO, tort claims against pet owners must be brought either within ten years from the date the tort was committed or within two years from the date the claimant became aware of the damage and the identity of the tortfeasor. On the other hand, lawsuits for property damage and bodily injury caused by wild animals should be dealt with by an administrative court. Tort claims against the state for damage caused by wild animals must be brought either within one year from the date the damage occurred or, in any case, within five years.

#### **D. CONCLUSIONS**

Tort claims for damages caused by pets and wild animals differ by the statute of limitations, judicial remedy, the law on which the case is based, and strict liability principles.

Private law contains legal regulations allowing the victim of an animal

attack to file a tort claim against the pet owner for property damage and bodily injury caused by the attack. There are, however, no regulations about compensation for damages or injuries caused by wild animals. The legal gap in this field is filled by case laws, albeit haphazardly. Administrative court decisions hold the administration liable based on strict liability or negligence. The administrative justice has no settled case-law about it. The judicial jurisdiction makes more consistent decisions, perhaps because it has a special regulation on the subject.

From a people-oriented perspective, liability for property damage and bodily injury caused by wild animal attacks should be imposed on the administration. 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.

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. The principle of balancing of sacrifices 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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