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SOME REMARKS ON COMPENSATION FOR DAMAGES CAUSED BY INJURING OR KILLING OF COMPANION ANIMALS IN SERBIAN CIVIL (TORT) LAW**

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This paper deals with the compensation for damages caused by injuring or killing of a companion animal in Serbian tort law, where the main focus is on explaining the influence which 'animal welfare', as a legally protected non-patrimonial interest violated due to injury or killing of a companion animal, and 'emotional relationship between the owner and his/her injured or killed animal companion' may have on the application of tort law rules on recovery of damages. Firstly, the author tries to clarify the general influence of 'animal welfare' on the legal treatment of animals in Serbian civil law, since it seems that such clarification is necessary for the interpretation of the rules of civil law (particularly those of tort law). Thereafter, the author discusses the tort law rules for determining the amount of compensable pecuniary damages for an injured or killed companion animal, with special attention given to the problem of recovering costs for the veterinary treatment of the injured companion animal, which may be significantly higher than the animal's market value. To solve this problem, the author examines whether the fact that the owner is, pursuant to Serbian animal welfare legislation, obliged to take care of 'welfare' of his/her companion animal and to provide the veterinary treatment in case of its injury (i.e. in case of violation of 'animal welfare') can be relevant enough for awarding the compensation of costs necessary for such treatment in accordance with the existing rules of Serbian tort law, irrespective of the companion animal's market value and effectiveness of veterinary treatment. Finally, the author discusses the relevance of the emotional relationship between the owner and his/her injured or

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killed animal companion in Serbian tort law, focusing on the analysis of tort law provisions that may exceptionally enable the owner of an injured or killed companion animal to claim monetary compensation for the emotional/sentimental value that the animal had for him/her.

Key words: *civil law treatment of (companion) animals, violation of 'animal welfare', compensation for pecuniary damages, emotional human-animal relationship, non-pecuniary damages, compensation for emotional/sentimental value of injured/killed companion animal.*

I INTRODUCTION

The idea of providing a proper legal protection for animals matured in the Republic of Serbia (henceforth Serbia) at the end of the first decade of the 21st century, when the Serbian Parliament adopted the Animal Welfare Act[1] (henceforth abbr. AWA), whose solutions are mostly in line with those contained in German,[2] Swiss,[3] and Austrian[4] animal protection acts. As a legal source of public law nature, Serbian AWA prescribes a number of obligations of humans toward animals of all species (such as the obligation to take care of animals' health and life, obligation to refrain from inflicting pain, suffering, fear and stress on animals, obligation to refrain from abusing and killing of animals etc.),[5] including special obligations for owners and keepers of companion animals[6] (following the example of the European Convention for the Protection of Pet Animals,[7] which has been ratified by Serbia[8]), as well as administrative sanctions for their violation.[9] Also, the Criminal Code of Serbia[10] was amended by introducing new criminal offenses that protect animals, especially the criminal offense for the killing and abuse of animals.[11]

[1] Animal Welfare Act (AWA), *Official Gazette of the Republic of Serbia*, No. 41/2009.
[2] Tierschutzgesetz vom 24. 7. 1972, in der Fassung der Bekanntmachung vom 18. Mai 2006 (*BGBl.* I S. 1206, 1313), das zuletzt durch Artikel 280 der Verordnung vom 19. Juni 2020 (*BGBl.* I S. 1328) geändert worden ist.
[3] SR 455 Tierschutzgesetz von 16.12.2005, AS 2008 2965, *BBl* 2006 327.
[4] Tierschutzgesetz vom 28. 9. 2004, *BGBl.* I Nr. 118/2004, *BGBl* I Nr. 86/2018.
[5] Art. 6 and 7 of AWA
[6] Art. 53-70 of AWA
[7] European Convention for the Protection of Pet Animals, ETS No.125, Strasbourg, 13/11/1987.
[8] Act on Ratification of European Convention for the Protection of Pet Animals, *Official Gazette of the Republic of Serbia – International Agreements*, No. 1/2010.
[9] Art. 82-85 of AWA
[10] *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005 – correction, 72/2009, 11/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
[11] Art. 269 of Serbian Criminal Code

However, when it comes to the legal treatment of animals in civil law, the situation is quite different. Serbian civil law does not contain special provisions regarding the legal status of animals, nor does it include specific rules on compensation for damages resulting from the injuring or killing of animals. Animals are still characterised as movable things which belong to their owners who enjoy, in accordance with general rules of tort law, civil law protection in case they are injured or killed. Nevertheless, the adoption of AWA has encouraged civil law authors to discuss the legal status of animals and the recovery of damages for their injury and killing in great detail.[12] Generally, they took the view that the fact that every human (particularly an owner of an animal) has a legal duty to take care of animal welfare clearly shows that property rights over animals are limited, so that Serbian civil law must differentiate between animals and ordinary movables,[13] which should also have an impact on tort law cases concerning the injury or killing of animals.[14] As concerns companion animals, which are defined as animals kept for socializing,[15] authors also insist that the special emotional relationship between companion animals and their owners has to be taken into account by the court that decides on recovery of damages for their injury or killing.[16]

Bearing the above in mind, this paper aims to deal with several issues regarding the treatment of companion animals and compensation for damages for their injuring or killing in Serbian civil (tort) law. The study will begin with clarification of the extent to which the legally protected animal welfare has an influence on the legal

[12] See V. Vodinelić, *Građansko pravo,* Beograd, 2012, 411-416; M. Karanikić Mirić, *Građanskopravni tretman životinje u štetnom događaju*, in: Životinje i pravo (ed. M. Karanikić Mirić, M. Davinić, I. Vuković), Beograd, 2016, 155-158, 167-173; T. Jevremović Petrović, N. Petrović Tomić, *Naknada nematerijalne štete u slučaju smrti ili povrede životinje (kućnog ljubimca)*, in: Životinje i pravo (ed. M. Karanikić Mirić, M. Davinić, I. Vuković), Beograd, 2016, 175-208; R. Jotanović, *Pravni status životinja u građanskom pravu*, Godišnjak Pravnog fakulteta Univerziteta u Banjoj Luci, vol. 36, 2014, 101-120; R. Milenković, *Naknada štete u slučaju smrti ili povrede kućnog ljubimca*, Glasnik Advokatske komore Vojvodine, vol. 87, 2015, 525-542; J. Vidić Trninić, *Pravna zaštita kućnih ljubimaca u domaćem zakonodavstvu*, Zbornik radova Pravnog fakulteta u Novom Sadu no. 4, 2012, 305-334; S. Radulović, *(Pravni) status kućnih ljubimaca i posebna afekcija prema njima*, Zbornik radova Pravnog fakulteta u Nišu vol. 89, 2020, 335-351; Đ. Marjanović, *Pravo vlasnika životinje – kućnog ljubimca u slučaju njenog ubijanja ili povređivanja*, Savremeni izazovi u ostvarivanju i zaštiti ljudskih prava, Kosovska Mitrovica, 2025, 339-359.

[13] See particularly V. Vodinelić, *op. cit.*, 415-416; R. Jotanović, *op. cit.*, 117-118; S. Radulović, *op. cit.*, 342-344; V. Bajović, *Pravni status životinja – pokretne stvari ili nešto više?*, in: Kaznena reakcija u Srbiji- XIII део (ed. Đ. Ignjatović), Beograd, 2023, 231-255.

[14] V. Vodinelić, *Građansko pravo*, 416; M. Karanikić Mirić, *Građanskopravni tretman životinje*…, 167-173; R. Milenković, *op. cit.*, 528-530.

[15] See Art. 5(1) point 26 of AWA

[16] See particularly T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 179-180, 183; R. Milenković, *op. cit.*, 531-539; S. Radulović, *op. cit.*, 344-347.

status of animals in Serbian civil law, because such clarification is, in our opinion, a precondition for correct and dull interpretation of the rules of tort law contained in the Serbian Obligation Law Act[17] (henceforth abbr. SOLA). Thereafter, the study will focus on determining the amount of compensable pecuniary damages for injured or killed companion animal, where the special attention will be given to the issue of whether the fact that the 'damaged object' is the animal itself, i.e. its welfare protected by AWA, can be taken into account as an additional criterion for determining the amount of compensation for pecuniary damages. This issue particularly targets the problem of recovering veterinary costs for the treatment of the injured animal, considering that these costs may be significantly higher than the market value of the animal; it will be discussed whether their recovery can be justified by the fact that animal welfare was violated. Finally, the study will deal with the relevance of the emotional relationship between the owner and his/her companion animal in Serbian tort law, focusing on the possibility of awarding monetary compensation for the emotional/sentimental value the injured or killed companion animal had for its owner.

II 'ANIMAL WELFARE' AND LEGAL TREATMENT OF ANIMALS IN SERBIAN CIVIL (TORT) LAW

Since there is no special provision on the status of animals in Serbian civil law, one can claim that they should be treated as any other movable thing that has market value (price) and forms an integral part of someone's property. However, although animals are property items, they differ from inanimate movable things because they, as living creatures, enjoy a special legal regime by which their welfare is protected. Pursuant to Art. 5(1) point (4) of AWA, animal welfare is defined as providing for conditions in which animals can meet their physiological and other needs specific to their species such as water and food, accommodation, physical, mental and thermal comfort, safety, expression of basic behaviours, social contacts with animals of the same species, absence of pain, suffering, fear, illness and injury. The legal concept of animal welfare defined in this way clearly shows that the owners of animals are primarily responsible for their welfare, i.e. their health and life, which means they have a duty to take care of animal welfare and they are, for that purpose, imposed with many obligations which significantly limit the exercise of their property rights to which animals are subjected;[18] also every other person has certain obligations

[17] *Official Gazette of Socialist Federal Republic of Yugoslavia*, No. 29/78, 39/85, 45/89 – Decision of Yugoslav Constitutional Court, *Official Gazette of Federal Republic of Yugoslavia*, No. 31/93, *Official Gazette of Serbia and Montenegro*, No. 1/2003 – Constitutional Charter and *Official Gazette of the Republic of Serbia*, No. 18/2020 (translation of this act in English: Đ. Krstić (translator), *The Law on Contracts and Torts*, Belgrade, 1997).

[18] V. Vodinelić, *op. cit.*, 416; R. Jotanović, *op. cit.*, 117; N. Stojanović, *Deset godina Zakona o dobrobiti životinja Republike Srbije*, Zbornik radova Pravnog fakulteta u Novom Sadu, no. 2, 2019, 449.

towards animals concerning the protection of their welfare.[19] Having this in mind, it can be concluded that animal welfare represents a legally recognized and protected non-patrimonial (non-economic) interest,[20] which is why animals have to be treated as legal objects *sui generis.*[21]

Putting the welfare of animals in the foreground has led to the development of the view,[22] which has recently become increasingly popular in Serbian literature,[23] that animals are not only legal objects *sui generis*, but also persons *sui generis*. This *sui generis* legal personhood is reflected in the fact that animals, pursuant to AWA, possess certain personal goods (life, health, mental and physical integrity), which makes them legally capable to have personal (non-patrimonial) rights to those goods, such as the right to life, health, mental and physical integrity, while they do not have legal capacity for patrimonial rights and for any obligations as well as business capacity, capacity for tort liability and the capacity to be a party and to act independently in civil proceedings.[24] This means that an animal is the holder of its welfare as a protected non-patrimonial interest, but it is not legally entitled to claim civil law protection before the court in case of violation of this interest.[25] The right to claim legal protection in such a case belongs to the owner of the animal who is obliged to take care of its welfare.

The presented view on the *sui generis* legal personhood of animals does not essentially affect the civil law treatment of an injured or killed animal, given that the Serbian tort law continues to protect the owner of the animal, as a person who sustains damage, and not the animal itself. However, it clearly indicates that injury or killing of an animal damages not only the animal as the owner's property item which has a market value, but also the welfare of the animal as a legally protected non-patrimonial interest. Such reasoning implies that the violation of 'animal welfare' has certain consequences that target both the injured/killed animals and their owners. Namely, concerning the injured or killed animals, the violation of their welfare is reflected in the pain, fear, and stress they suffered due to injury or killing, which can be characterised as non-pecuniary damages, the compensation of which is not recognized in Serbian tort law.[26]

As concerns the owners of injured/killed animals, the violation of animal welfare imposes that they must bear certain costs, such as those for veterinary treatment, to

[19] Art. 6 and 7 of AWA
[20] M. Karanikić Mirić, *Građanskopravni tretman životinje*…, 171.
[21] V. Vodinelić, *op. cit.*, 416; R. Jotanović, *op. cit.*, 117; S. Radulović, *op. cit.*, 344.
[22] V. Vodinelić, *op. cit.*, 415-416.
[23] T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 177-179; R. Jotanović, *op. cit.*, 112-118; M. Karanikić Mirić, *Građanskopravni tretman životinje…*, 170-173.
[24] V. Vodinelić, *op. cit.*, 416; M. Karanikić Mirić, *Građanskopravni tretman životinje…*, 172; R. Jotanović, *op. cit.*, 118; S. Radulović, *op. cit.*, 343-344.
[25] M. Karanikić Mirić, *Građanskopravni tretman životinje*…, 172.
[26] *Ibid.*, 172-173.

heal the violated animal welfare, which is their legal obligation embedded in the legal concept of animal welfare. These costs represent pecuniary damage for the animal's owner and can be, especially in cases of injury or killing of companion animals, much higher than the market value of the animal. With this in mind, one may raise the question whether the owner of the injured or killed companion animal can claim the compensation of costs necessary for performing his/her duty of taking care of animal welfare, that can exceed the animal's market value or, in order words, whether the fact that 'animal welfare' is harmed can, in addition to animal's market value, influence determining the amount of compensation for pecuniary damages?

III PECUNIARY DAMAGES FOR INJURING OR KILLING OF A COMPANION ANIMAL – THE IMPACT OF 'ANIMAL WELFARE' ON DETERMINING THE AMOUNT OF COMPENSATION

A. General rules on awarding compensation and setting the problem

In Serbian tort law, the pecuniary damage is defined as the diminution of someone's property (simple damage) and, eventually, as preventing its increase (i.e., as the loss of profit that could be expected if the damaging event had not occurred).[27] The amount of compensation is to be calculated according to the prices at the time of rendering the court decision (Art. 189(2) of SOLA) and determined by applying the so called principle of integral compensation (Art. 190 of SOLA), that imposes the awarding of amount which is necessary to bring the material situation of the person sustaining damage to the state in which it would have been if there had been no damaging act or omission (regardless of the degree of fault of the person who caused the damage).[28] When a thing (property item) is damaged or destroyed, the main criterion for calculating the amount of compensation is the market price of that thing and, if the owner had a profit from using the damaged or destroyed thing, the market value of the lost profit.[29]

Since the companion animal is a property item, the owner may suffer pecuniary damage if his/her animal is injured or killed. In such a case the diminution or loss of animal's market value represents a simple damage, while loss of profit is very rare because the owner keeps the companion animal mainly for socializing (and not for a profit), although it can occur in some cases[30] – e.g., the owner of a dog has been

[27] Art. 155 of SOLA

[28] M. Karanikić Mirić, *Obligaciono pravo*, Beograd, 2024, 501-502, 667; Ž. Đorđević, *Član 189 ZOO*, in: Komentar Zakona o obligacionim odnosima (ed. Slobodan Perović, Dragoljub Stojanović), Gornji Milanovac, 1980, 558 – 563; Ž. Đorđević, *Član 190 ZOO*, in: Komentar Zakona o obligacionim odnosima (ed. Slobodan Perović, Dragoljub Stojanović), Gornji Milanovac, 1980, 565-569; M. Kraranikić Mirić, *Odmeravanje naknade štete prema vrednosti koju je stvar imala za oštećenika*, *CRIMEN* II no. 1, 2011, 69-72.

[29] *Ibid.*

[30] R. Milenković, *op. cit.*, 525-526, 530.

selling the cubs and thus earning a certain income, but after the occurrence of the harmful event he/she can no longer do so, which means the loss of profit is reflected in losing the income that could be expected from the selling of cubs. Therefore, it can be concluded that the basic criterion for calculating the amount of compensable simple damage is the market price of the companion animal, which depends on the breed, gender, health condition, age, training, etc.,[31] and the criterion for calculating the lost profit is the market price of the missing profit (e.g. the market price of a cub). By using these criteria Serbian Appellate Court in Novi Sad has, in its decision of April 21, 2011, determined the amount of compensation for pecuniary damages in one case of the killing of a companion animal.[32] According to the facts of this case, workers of a utility company in Novi Sad, which was engaged in the campaign of removing stray dogs, mistakenly killed a male Labrador retriever who had fantastic bloodlines and was excellent for breeding, from which the owner could benefit. The Appellate Court in Novi Sad, relying on the expert witness's findings, determined that the market value of the dog was 5000 euros and awarded (in accordance with Art. 189 and 190 of SOLA) the owner of the dog that amount as compensation for simple pecuniary damage. The court also considered the possibility of awarding the lost profit, which could be obtained by using the dog for breeding (the owner of the dog could sell the best male puppy from the litter for the market value of 500 euros), but decided not to award it because the owner did not use the dog for that purpose.[33]

However, in many cases, the companion animals have a very low (or no) market value, and their owners do not care about their bloodlines or the profit from their reproduction, but keep them exclusively for socializing, often considering them as family members.[34] If such companion animal has been immediately killed by wrongdoer, very low or no pecuniary damage is caused to its owner who is, therefore, usually left without compensation; the owner could eventually claim the compensation for the emotional value the killed companion animal had for him/her, which becomes the important disposable 'tool' of tort law in this kind of cases that may burden the wrongdoers (which will be discussed latter in section 4). On the other hand, if the low-priced companion animal has been injured by a wrongdoer, the owner is, pursuant to AWA,[35] legally obliged to provide veterinary treatment for his/her injured animal, the costs of which are usually several times higher than the animal's market price. Since companion animal's market price is a main criterion for calculating the amount of compensable pecuniary damages, it is necessary (as already stated above) to explain whether the owner of the injured companion animal is entitled to claim the recovery of veterinary treatment costs or, more precisely, whether

[31] See also Đ. Marjanović, *op. cit.*, 347.

[32] Appellate Court in Novi Sad, Judgement Gž. 805/11 of April 21, 2011, https://sudskapraksa.sud.rs/sudska-praksa, visit date: November 25th, 2025.

[33] *Ibid.*

[34] In that regard see also S. Radulović, *op. cit.*, 346.

[35] See Art. 6 (4) and (5) of AWA.

the principle of integral compensation of pecuniary damage 'covers' such costs which are higher than the market price of the injured companion animal, especially if one takes into account that the owner cannot avoid them. The affirmative answer would certainly mean that Serbian tort law not only protects the patrimonial interests of the owner of the injured companion animal, but also takes care of the companion animal's interests, i.e., its welfare. The following subsection discusses this issue.

B. Principle of integral compensation and the duty of taking care of 'animal welfare' – the recovery of veterinary expenses and other incurred costs

Since the market value of a thing is set as an objective criterion for determining the amount of compensable simple pecuniary damage, it is usually argued that this value in any case represents the limit up to which the compensation amount can be awarded.[36] However, in our opinion (which relies on the views taken in Serbian literature[37]), the market value of the damaged or destroyed thing is a main criterion that can be supplemented by additional criteria for measuring the amount of compensation, depending on the circumstances of the case, whereby the court must take care not to impair the reparative function of tort law. We believe that our opinion has a strong basis in the text of Art. 190 of SOLA, which regulates the principle of integral compensation of pecuniary damage and reads as follows:

"While also taking into account the circumstances after the occurrence of damage, the court shall award compensation in the amount necessary to restore the material situation of the person sustaining damage into the state it would have been without damaging act or omission".[38]

The wording of this provision clearly indicates that the principle of integral compensation requires the court to take into account all the relevant (either general or special) circumstances that existed before and at the time of the damaging event or that occurred after the damaging event, to assess the amount of compensation that will bring the person sustaining damage into a material position in which he/she would have been if the damaging event had not occurred. Which circumstances are to be considered as relevant is to be assessed in each specific case,[39] where the court must provide that taking such circumstances into account does not make 'a profit' to the person sustaining damage, but brings him/her into a material situation in which he/she would have been without a damaging event.[40]

In Serbian literature, it is noted that one of the circumstances which may occur after the thing was damaged and which must be taken into account when calculating the amount of compensation is that the person sustaining damage can repair the thing

[36] M. Konstantinović, *Obligaciono pravo, beleške sa predavanja*, Beograd, 1969, 98; J. Radišić, *Obligaciono pravo, opšti deo*, Beograd, 2007, 272.
[37] See Karanikić Mirić, *Odmeravanje naknade štete…*, 78.
[38] Translated by Đ. Krstić, *op. cit.*, 64.
[39] Ž. Đorđević, *Član 190 ZOO…*, 566-568.
[40] M. Karanikić Mirić, *Odmeravanje naknade štete…*, 70, 78.

at his/her own expense and then require the responsible person to compensate these expenses.[41] In case of injury of a companion animal, such a circumstance occurs when the owner, as a person sustaining damage, provides veterinary treatment to his/her injured companion animal, where this treatment can be roughly characterized as 'repairing' of an animal. However, it must be emphasized that the owner of the companion animal (unlike the owners of other damaged things who are free to decide whether to repair the thing) is obliged to do so, i.e., to provide proper veterinary assistance to the injured animal, since it is required by Art. 6(4) point 2 of AWA. This obligation exists irrespective of whether the costs of veterinary treatment significantly exceed the market value of the companion animal and represents only one of many obligations of the owner whose purpose is to protect animal welfare. Hence, the care of animal welfare, as a legally protected non-patrimonial interest, creates certain material costs for the owner of the animal, who must bear them, and this fact should not be ignored.

Namely, considering that the injuring of an animal means that its legally protected welfare has been injured too, it is clear that such injury (damage) could only be 'repaired' by veterinary treatment. Veterinary treatment itself can successfully heal the injury of the animal or can be, depending on the severity of injury, of little help or completely ineffective (e.g., the veterinarian did everything in his/her power to save the animal's life, but there was no way to save it). In all these situations, the material costs of the treatment (which arise after injury, i.e. after damaging event) are borne by the owner and cannot be avoided because the providing of a veterinary treatment for the injured animal is a legal obligation of the owner, which means the court must take them into account when calculating the amount of compensation, irrespective of whether they are higher than the animal's market value or whether the veterinary treatment was fully or partially effective or completely ineffective. The compensation of veterinary costs (the amount of which is to be determined according to market prices of veterinary services in accordance with Art. 189(2) of SOLA) would bring the owner of the companion animal into the material situation in which he/she would have been if his/her companion animal had not been injured, just as it is required by the principle of integral compensation contained in Art. 190 of SOLA.[42] In addition, it must be mentioned that Art. 6(3) of AWA imposes the obligation of providing the veterinary assistance for the injured animal to the responsible person (wrongdoer) too, which can be cited as an extra argument for his/her obligation to recover the costs of veterinary treatment to the owner of the animal who paid them.[43]

Therefore, in our opinion there are no obstacles to recognize veterinary treatment costs (including medicines and other medical devices) as a simple pecuniary damage

[41] O. Stanković, *Naknada imovinske štete: iznos naknade kod deliktne odgovornosti*, Beograd, 1968, 52-68; Ž. Đorđević, *Član 190 ZOO…*, 567-568.

[42] R. Milenković, *op. cit.*, 530.

[43] About the recovery of cost for veterinary treatment of companion animals see also Đ. Marjanović, *op. cit.*, 344-346.

which the responsible person must compensate, even if the amount of these costs is higher than the market price of the companion animal and irrespective of effectiveness of veterinary treatment, because such recognition is completely in accordance with the principle of integral compensation of pecuniary damages and supported by the legal concept of 'animal welfare'. Although the awarding of compensation for these costs is primarily set in the interest of companion animals' owners, nobody can deny that it indirectly serves to protect the interests of companion animals, i.e., their welfare, too. By imposing the obligation on the responsible person to recover all costs necessary for veterinary treatment of an injured companion animal, the rules of Serbian tort law are actually interpreted and applied under the influence of the existing animal welfare legislation.

Finally, it should be added that, following the principle of integral compensation, the owner of companion animal is also entitled to recover all other costs incurred in connection with the damaging event, such as costs of transport of the injured companion animal to the veterinarian, funeral costs, etc., since there is an adequate causal link between the occurrence of these costs (as a simple pecuniary damage) and the damaging event (the act of injury or killing of the companion animal).[44] However, the compensation for the costs incurred by the owner for keeping and caring for companion animals during their lifetime, such as costs of accommodation, food, regular medical examinations, vaccinations, training, etc., cannot be awarded. In the above-mentioned decision, the Appellate Court in Novi Sad dealt with this issue and concluded that the owner of the killed companion animal is not entitled to claim the recovery of such expenses from the responsible person.[45] The court stated that the costs (for food, vaccinations, etc.) incurred by the owner to get the dog in the shape it was in at the time it was killed cannot be taken into account, because he invested in his dog to achieve the quality and the value the dog had at the time of the damaging event. In other words, the court ruled that these costs cannot be separately recovered because they are already included in the amount of simple pecuniary damage, which is determined according to the market value of the killed dog.[46]

IV AWARDING THE COMPENSATION FOR THE EMOTIONAL/SENTIMENTAL VALUE OF INJURED OR KILLED COMPANION ANIMAL

Since companion animals are kept for socializing, their owners regularly establish a strong emotional relationship with them,[47] where such an emotional

[44] About causality/causal link in Serbian tort law see Ž. Đorđević, V. Stanković, *Obligaciono pravo*, Beograd, 1986, 358-363.

[45] Appellate Court in Novi Sad, Judgement Gž. 805/11 of April 21, 2011, https://sudskapraksa.sud.rs/sudska-praksa, visit date: November 25th, 2025.

[46] *Ibid.*

[47] See S. Radulović, *op. cit.*, 346-347.

connection represents a special non-patrimonial value for the owners. Therefore, in case the companion animal is injured or killed, its owner usually suffers emotional distress (mental pain) that is significantly different from his/her negative feelings due to the diminution or loss of the animal's market value and can be compared to emotional distress (mental pain) suffered due to injury or death of a closely related person.[48] With this in mind, one may raise the question whether the owner of an injured or killed companion animal can claim compensation for such emotional distress, which is undoubtedly a form of non-pecuniary damage. Generally speaking, Serbian tort law does not recognize compensation of non-pecuniary damages for emotional distress suffered due to damage or loss of a property item,[49] which also applies to the compensation for emotional distress suffered by the owner of the injured or killed companion animal, since the companion animal is a property item too.[50] However, it is convincingly argued that the provision of Art. 189(4) of SOLA exceptionally (i.e., under certain conditions) enables the owner of a damaged or destroyed property item to claim monetary compensation for the emotional/sentimental value that that item had for him/her.[51] The existence of such emotional/sentimental value depends on the intensity of the owner's emotional/sentimental attachment to the item[52] and, in case the item is damaged or destroyed, is reflected in a certain kind of emotional distress suffered by the owner, which is characterized by some authors as non-pecuniary damage.[53] Hence, it means that the owner of a companion animal, who was emotionally attached to the animal and suffered emotional distress due to its injury or killing, may claim monetary compensation for such damage, too.[54]

Art. 189 of SOLA contains four paragraphs, where the first three paragraphs are focused on determining the amount of pecuniary damages in accordance with economic criteria following the principle of integral compensation, while the fourth (and last) paragraph regulates the special case of determining the amount of

[48] R. Milenković, *op. cit.*, 532.

[49] Supreme Court of Serbia, Decision Rev. 2749/2004 of November 25, 2004, *ParagrafLex;* District Court in Valjevo, Judgement Gž. 1119/2005 of July 21, 2005, *ParagrafLex;* M. Karanikić Mirić, *Obligaciono pravo*, 515; M. Karanikić Mirić, *Non-Pecuniary Loss in Serbian Tort Law: Time for a Change in Paradigm?*, in: SEE/EU Cluster of Excellence in European and International Law Series of Papers, Vol. 2, Saarbrücken, 2016, 5-6; M. Karanikić Mirić, *Odmeravanje naknade štete…*, 75-76.

[50] M. Karanikić Mirić, *Građanskopravni tretman životinje…*, 169-170.

[51] Ž. Đorđević, *Član 189 ZOO…*, 564; O. Antić, *Obligaciono pravo*, Beograd, 2010, 474; J. Salma, *Obligaciono pravo*, Novi Sad, 2007, 600.

[52] T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 183.

[53] Ž. Đorđević, *Član 189 ZOO…*, 564.

[54] T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 183-184; R. Milenković, *op. cit.*, 534, 538; O. Antić, *op. cit.*, 474; S. Radulović, *op. cit.*, 340-342, 345-46.

compensation according to the value the destroyed or damaged thing had to its owner. The fourth paragraph reads as follows:

"(4) Where a thing is destroyed or damaged by a criminal offence committed wilfully, the court may determine the amount of compensation according to the value the thing had for the person sustaining damage".[55]

It is obvious that the wording of Art. 189(4) of SOLA introduces 'the value the destroyed or damaged thing had for the person sustaining damage' as a special criterion for determining the amount of compensation, which can be applied only if that thing was damaged or destroyed by a wilfully committed criminal offence. Some authors claim that this criterion represents the subjective economic criterion for determining the amount of pecuniary damages in special situations.[56] In contrast, others argue that it serves as the basis for compensation for the sentimental or emotional value the damaged or destroyed thing had for the owner.[57] The latter view implies that Art. 189(4) of SOLA regulates a special case of compensation for non-pecuniary damage which is reflected in a special kind of emotional distress suffered due to damaging or loss of an emotionally valuable thing and whose amount, determined by the assessment of the degree of owner's emotional attachment to that thing, is to be "added" to the amount of compensation of pecuniary damage determined in accordance with the principle of integral compensation.[58] Nevertheless, irrespective of whether it is characterized as a subjective economic criterion for determining the amount of pecuniary damages or a special type of compensation for non-pecuniary damage, it is undisputable that, under this rule, the higher amount of compensation for damages may be awarded, which has also been confirmed in Serbian judicial practice. In its decision of November 24th 2004, the Supreme Court of the Republic of Serbia took the stance that Art. 189(4) of SOLA regulates determining 'the amount of pecuniary damages that is higher from the real value of destroyed thing' and, thus, 'corresponds to the adequate value the thing had for its owner',[59] which led some authors to the conclusion that the Supreme Court interpreted Art. 189(4) of SOLA in a way that it introduced the subjective economic criterion for calculating the amount of compensation for pecuniary damages.[60] However, in the decisions of Serbian appellate and higher courts which followed the

[55] Translated by Đ. Krstić, *op. cit.*, 63 - 64.

[56] M. Karanikić Mirić, *Obligaciono pravo*, 515-516, 668; M. Karanikić Mirić, *Odmeravanje naknade štete…*, 78-79; J. Radišić, *Razgraničenje imovinske i neimovinske štete*, Anali Pravnog fakulteta u Beogradu, no. 1-3, 1998, 14; Đ. Marjanović, *op. cit.*, 351-352.

[57] See and compare Ž. Đorđević, *Član 189 ZOO...*, 564; O. Antić, *op. cit.*, 474; T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 183; S. Radulović, *op. cit.*, 340-341; M. Mijačić, *Naknada afekcione vrednosti uništene stvari*, *Pravni život* br. 1-2, 1993, 279; J. Salma, *op. cit.*, 600.

[58] *Ibid.*

[59] Supreme Court of Serbia, Decision Rev. 2749/2004 of November 25, 2004, *ParagrafLex.*

[60] M. Karanikić Mirić, *Odmeravanje naknade štete…*, 78-79; M. Karanikić Mirić, *Obligaciono pravo*, 515-516.

mentioned decision of the Supreme Court, it was sometimes stated that this provision imposes the recovery of non-pecuniary damage whose amount is to be determined according to the emotional (sentimental) value the destroyed or damaged thing had for its owner.[61] Namely, the Appellate Court in Kragujevac found, in its decision of September 21st, 2010, that 'the law regulates non-pecuniary damage for the loss of the thing only if such a loss is caused by a wilfully committed criminal offence, according to Art. 189(4) of SOLA', and added that this provision 'enables the amount of compensation be determined in accordance with the subjective criterion, i.e., according to the value the thing had for the person sustaining the damage (sentimental value)'.[62] On the other hand, it seems that the decision of the Appellate Court in Belgrade, rendered on September 20th, 2018, illustrates most suitably how the provision of Art. 189(4) of SOLA is to be interpreted and applied. In this decision, it was clearly emphasized that Art. 189(4) of SLOA regulates the compensation of damage for a loss of 'special emotional/sentimental value' the destroyed property item had to its owner, 'which represents an exception to the rule that the market value of a thing is the main criterion for determining the amount of compensation'.[63] In addition, the court also very clearly explained that the amount of damages is to be measured not only according to an objective criterion, i.e., to the market value of a thing, but also to the 'special value' of a thing that 'falls under subjective criteria' in terms of Art. 189(4) of SOLA, based on which the recovery of 'emotional/sentimental value' of a thing is to be awarded.[64]

Having the above in mind, there is no doubt that the application of Art. 189(4) of SOLA may have a great significance for cases concerning the injury or killing of companion animals. Namely, since there is a presumption that the owner is strongly emotionally attached to his/her companion animal, the compensation for damages under Art 189(4) of SOLA can be claimed in almost every case of injury or killing of a companion animal. Given that the market value of a companion animal can be very low, the compensation based on emotional/sentimental value of companion animal becomes very often the only 'appropriate' satisfaction for its owner[65] and can also be characterized as 'a proper civil law tool' that aims to serve the protection of animal welfare, since its existence certainly has a preventive function – it influences humans

[61] See and compare Appellate Court in Kragujevac, Judgement Gž. 3174/2010 of September 21, 2010, *ParagrafLex*; Appellate Court in Novi Sad, Judgement Gž. 5739/10 of November 17, 2010, Bilten Apelacionog suda u Novom Sadu, no. 2 (2011); Higher Court in Niš, Judgement Gž. 187/2014 of March 6, 2014, *ParagrafLex*; Appellate Court in Belgrade, Judgement Gž. 2285/2018 of September 20, 2018, *ParagrafLex*.

[62] Appellate Court in Kragujevac, Judgement Gž. 3174/2010 of September 21, 2010, *ParagrafLex*.

[63] Appellate Court in Belgrade, Judgement Gž. 2285/2018 of September 20, 2018, *ParagrafLex*.

[64] *Ibid.* Also, see and compare M. Karanikić Mirić, *Obligaciono pravo*, 668.

[65] R. Milenković, *op. cit.*, 532.

(potential wrongdoers) to refrain from actions that are detrimental to animals. However, to award the compensation for the emotional/sentimental value of a companion animal under Art. 189(4) of SOLA, it is necessary that the injury or death of a companion animal represents a consequence of a wilfully committed criminal offense. In most cases, it will be the criminal offence of killing and abusing animals, which is regulated by Art. 269 of the Criminal Code of Serbia.[66] This criminal offense occurs when a person who, in violation of regulations (primarily the provisions of the Animal Welfare Act), kills, injures, tortures, or otherwise abuses an animal, and it becomes relevant for the application of Art. 189(4) of SOLA if committed wilfully by a person other than the owner of the companion animal. Nevertheless, it must be noted that the requirement that the offence should be committed wilfully is, undoubtedly, the main imperfection of Art. 189(4) of SOLA, because it significantly reduces the number of cases in which this compensation can be awarded.[67]

V CONCLUSION

Although companion animals are traditionally characterized as property items, it must be accepted that their treatment differs from the treatment of inanimate movable things, since the Serbian legal system recognizes them as living creatures whose welfare, as their non-patrimonial interest, is protected by Serbian AWA. Having this in mind, in cases concerning compensation of pecuniary damages for injuring or killing of companion animals, Serbian courts must, in addition to the loss of animal's market value, take into account that 'animal welfare', as a legally recognized non-patrimonial interest, is violated by wrongdoer too, which means it can influence the application of rules of Serbian tort law on determining the amount of damages which should be compensated. Such influence becomes particularly obvious in the cases of compensation of costs incurred for veterinary treatment of the injured companion animal, which the owner of the companion animal cannot avoid, since he/she is, pursuant to AWA, legally obliged to provide that treatment. These costs, including other expenses incurred in connection with the damaging event, have to be taken into account within the principle of integral compensation of pecuniary damages regulated by Art. 190 of SOLA and recognized as compensable pecuniary damages in Serbian tort law, irrespective of whether they exceed the market price of the injured companion animal.

As concerns the emotional relationship between the owner and his/her companion animal that can be significantly disturbed by the injury or killing of the companion animal, Serbian tort law exceptionally enables the awarding of monetary

[66] *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005 – correction, 72/2009, 11/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

[67] T. Jevremović Petrović, N. Petrović Tomić, *op. cit.*, 184; M. Mijačić, *op. cit.*, 283; R. Milenković, *op. cit.*, 536.

compensation for damages in such cases under Art. 189(4) of SOLA, which generally regulates the compensation for the emotional/sentimental value the damaged or destroyed property item had for its owner. Presuming that the owner establishes a strong emotional relationship with his/her animal companion, the possibility to claim the compensation for emotional/sentimental value of injured or killed companion animal is of utmost importance in cases where the companion animal has a very low or no market value – in such cases this claim becomes the main civil law tool aiming to provide certain kind of satisfaction for companion animal's owner and to serve indirectly the protection of companion animal's welfare. However, it should be emphasized that, according to Art. 189(4) of SOLA, the compensation for such damage can be claimed only if the injury or death of a companion animal has occurred as a consequence of a willfully committed criminal offence, which represents the major disadvantage that significantly reduces the number of cases in which the compensation for the emotional/sentimental value of an injured or killed companion animal can be awarded.

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НЕКОЛИКО НАПОМЕНА О НАКНАДИ ШТЕТЕ У СЛУЧАЈУ ПОВРЕЂИВАЊА ИЛИ УБИЈАЊА КУЋНИХ ЉУБИМАЦА У СРПСКОМ ГРАЂАНСКОМ (ОДШТЕТНОМ) ПРАВУ

Резиме

Овај рад се бави накнадом штете због повређивања или убијања кућног љубимца у српском грађанском (деликтном) праву, стављајући у главни фокус разматрање утицаја који „добробит животиња", као правно заштићени нематеријални интерес кућног љубимца, и „емоционални однос између власника и његовог повређеног или убијеног кућног љубимца" могу имати на примену правила о накнади штете из Закона о облигационим односима (ЗОО). Најпре, аутор покушава да разјасни какав утицај „добробит животиња" има на правни третман животиња у српском грађанском праву, јер се чини да је такво разјашњење неопходно за правилно тумачење правила грађанског права (посебно правила о вануговорној одговорности за штету). Након тога, аутор разматра примену правила о одређивању висине накнаде материјалне штете у случају повреде или убијања кућног љубимца, посвећујући посебну пажњу проблему накнаде трошкова за лечење повређеног кућног љубимца који могу

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бити знатно виши од његове тржишне вредности. У том смислу, аутор испитује да ли чињеница да је власник дужан, према српском Закону о добробити животиња, да води бригу о „добробити“ свог кућног љубимца и да му обезбеди ветеринарско лечење у случају његове повреде (тј. повреде његове „добробити“ као нематеријалног интереса) може бити релевантна за досуђивање накнаде трошкова неопходних за такво лечење у складу са важећим правилима српског одштетног права, без обзира на тржишну вредност кућног љубимца и ефикасност ветеринарског лечења. На крају, аутор разматра значај емоционалног односа између власника и његовог повређеног или убијеног кућног љубимца, фокусирајући се на анализу одредби ЗОО које изузетно могу омогућити власнику да захтева новчану накнаду за афекциону (сентименталну) вредност коју је повређени или убијени кућни љубимац за њега имао.

Кључне речи: *грађанскоправни третман кућних љубимаца (животиња), повреда добробити животиња, накнада материјалне штете, емоционални однос човека и животиње, нематеријална штета, накнада афекционе вредности повређеног/убијеног кућног љубимца.*