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LEGAL STATUS AND INDEMNITY, VETERINARY-EPIDEMIOLOGICAL AND PSYCHOLOGICAL CONTEXT OF STRAY DOGS IN THE LEGAL SYSTEM OF BOSNIA AND HERZEGOVINA

Lejla SULJEVIĆ*, Muhamed KATICA*, Belma BAJRIĆ*, Safet KAPO*, Nadža KAPO*, Anida KAPO-GURDA*, Amela BAJRIĆ*

* Master of Laws, Legal and HR Assistan, Atalian Global Services BH d.o.o., Sarajevo, Bosnia and Herzegovina
lejla_suljevic_@hotmail.com • ORCİD 0000-0003-1685-8717

* Full Professor, Department of Clincal Sciences of Veterinary Medicine, University of Sarajevo, Veterinary Faculty, Sarajevo,Bosnia and Herzegovina
muhamed.katica@vfs.unsa.ba • ORCİD 0000-0002-8184-0065

* Assistant Professor, Faculty of Law, University of Bihać, Bihać, Bosnia and Herzegovina
belmabajric5@gmail.com • ORCİD 0000-0003-4175-8208

* Full Professor, Faculty of Sport and Physical Education, University of Sarajevo; Sarajevo, Bosnia and Herzegovina
kapo.safet@gmail.com • ORCİD 0000-0002-7899-2789

* Doctor of Veterinary Medicine (DVM), Veterinary Faculty, University of Sarajevo, Sarajevo, Bosnia and Herzegovina
nadzakapo@gmail.com • ORCİD 0000-0002-9922-8034

* Master of Sports and Physical Education, PhD candidate, Faculty of Educational Sciences, University of Sarajevo, Sarajevo, Bosnia and Herzegovina,
anida.kapo2@gmail.com • ORCİD 0000-0002-7865-806X

* Specialist of general surgery, Canton Hospital „Dr. Irfan Ljubijankić, Bihać, Bosnia and Herzegovina
amelabajricdr@gmail.com • ORCİD 0000-0002-0831-6988

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Abstract

Attacks by dogs, primarily stray dogs, are a very common problem faced by both underdeveloped and developed local goverments. The damage caused by attacks from stray dogs has multiple, and often long-lasting, harmful consequences for their victims, which are also reflected on members of their families. This manuscript provides a veterinary-epidemiological definition of the concept of dogs, as well as their legal definition in the context of „dangerous things“, and the psychological aspect that is regularly manifested in victims. Analyzing the legislation of Bosnia and Herzegovina, with a comparative presentation of the regulations of the EU member states, systematic overviews and answers are given, which are important for the improvement of existing regulations and harmonization of law and jurisprudence.

Keywords

Stray Dogs, Veterinary-Epidemiological Aspect, Psychological Aspect, Legal Aspect (Dangerous Things), Damage (Non-Material and Material)

INTRODUCTION

Bosnia and Herzegovina[1] like al neighboring countries, has an organized system of norms of right of indemnity that treat damages caused by dangerous things. As the great problem of today's damage is caused by attacks of animals, explicitly dogs, and especially stray dogs, there was an urgent need to connect two different areas, but in this case closely related. This manuscript identifies the dog, as well as lists the dangerous types of dogs that are positively recognized by legal norms as „dangerous things“ and a potential cause of non-property and property damage.

The dog as a man's „best“ friend practically exists with him in almost all segments of his life. Their mutual relationship in the modern world is the subject of analysis and study from the legal, veterinary-epidemiological, social, psychological-pedagogical point of view of regulation and observation. In order to properly understand the relationship between man and dog, the author's intention is to clarify the relationship man and dog, with all its specifics, through an interdisciplinary approach. In that sense, the authors tried to connect veterinary with the legal aspect of this issue and to clarify what kind of liability for damages

[1] Hereinafter: BiH

is in question and how it is regulated in Bosnia and Herzegovina and the neighboring countries.

1. VETERINARY-EPIDEMIOLOGICAL ASPECT OF DETERMINATION OF DOGS WITH ACCENT TO STRAY DOGS

The dog is a member of the *Canidae* family, and that family is quite diverse, from the desert fox (Fenek) to the Canadian wolf for towing timber.[2] There are reports, Fogle (2000) that confirm that there are more than 400 domesticated dog breeds; a large number of mixed races and a much smaller number of purebreds. They are manily intended for human society, although the number of those who are very socially useful is not negligible: livestock dog breeds, specially trained „service dogs" in military and police services, as well as in mountain rescue services and so.

The lack of human support for dogs causes the activation of their self-preservation mechanisms and a return to natural patterns of behavior. After their owners abandoned them, dogs that had previously become accustomed to special and very acceptable living conditions found themselves in a very confusing situation. Stray dogs are those that lack the attention of potential owners, so they are usually free to roam the streets and other public spaces without proper identification.[3]

They can be divided into four groups (according to the World Health Organization[4]):

- abandoned dogs or those who have lost their owner;

- dogs of known owners that move freely in public spaces without supervision of the owner;

- dogs that never had an owner and were born on the street and

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2 FOGLE, Bruce, The New Encyclopedia of the dog, London: Dorling Kindersley Limited, 2000, pp. 27-29.

3 KATICA, Muhamed/OBRADOVIĆ, Zarema/GRADAŠČEVIĆ, Nedžad/HADŽIMUSIĆ, Nejra/MUJKANOVIĆ, Ramo/MESTRIĆ, Esad, et al., „Assessment of the Effect of Stray Dogs as a Risk Factor for the Health of Population in Certain Areas of Bosnia and Herzegovina", EJBS, 4, 2017., pp. 107-11.

4 Hereinafter: WHO.

- wild dogs.[5]

After the war in BiH, many pets (dogs) lost their owners and homes and so, like their descendants, they had to live like stray dogs. Due to their relatiely high reproductive capacity and the lack of necessary activities of municipal authorities in this direction, the number of stray dogs has manily increased, with an equal increase in potential danger to human health. Excrement, urine and hair of stray dogs may indirectly pose a potential risk for the development of echinococcosis and other parasitic and bacterial diseases, by contaminating arable land, land, pastures, meadows and water sources.[6]

A dog's oral cavity consists of a large spectrum of more than 200 bacteria, viruses and dog bites are potential risks of infection. For years, people have been attacked and wounded by dogs of well-known owners, but also by stray dogs to a relatively equal extent.[7] The children, the elderly and pregnant women are the categories most susceptible to dog attacks.[8]

Despite numerous studies, it is difficult to prove the reasons for dogs attacking people, as well as determining at what point and which profile of a person is particularly at risk. There are several reasons for aggressive behavior of dogs, and the most important are protection of

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5 KATICA, Aida, „Psi lutalice potencijalna „eko bomba“, Veterinaria, No. 68(3), Sarajevo, 2019., pp. 52-54. and ORGANIZATION for Respect and Care of Animals „Orca“. 2005. i „Stray dogs – humane and efficient control, manual for the development of programs for control and reduction of the population of stray dogs and cats according to WHO and WSPA recommendations.” Internal publication, Publisher „Orca“, Press, Kolibri, Belgrade, Serbia, pp. 11-112.

6 KATICA, Muhamed/GRADAŠČEVIĆ, Nedžad/HADŽIMUSIĆ, Nejra/OBRADOVIĆ, Zarema/MUJKANOVIĆ, Ramo/MESTRIĆ, Esad/ČOLOMAN, Senad/DUPOVAC, Muhamed, „Widespread of stray dogs: methods for solving the problem in certain regions of Bosnia and Herzegovina“, International Journal of Research -GRANTHAALAYAH 5 (6), 2017., pp. 414-422.

7 KATICA, Muhamed/OBRADOVIĆ, Zarema/AHMED, Nasreldin Hassan/MEHMEDIKA-SULJIĆ, Enra/STANIĆ, Žana/MOHAMED, Rowida Seifeldin Abdalaziz/DERVIŠEVIĆ, Emina, „Interdisciplinary aspects of possible negative effects of dogs on humans in Bosnia and Herzegovina“, Medicinski Glasnik, No. 17(2), Zenica, 2020., pp. 246-251.

8 Katica/Obradović/Ahmed/Mehmedika-Suljić/Stanić/Mohamed/Dervišević, pp. 246-251.

their puppies, protection of their territory and search for food. High population density, as well as the number of people moving in certain areas are the most common factors that lead to increased aggression of dogs. Some dog breeds (Bull Terrier, German Shepherd, Cocker Spaniel, Pit Bull, Collie, Rottweiler, Doberman Pinscher and Siberian Husky) have been identified as more aggressive dog breeds that others. (Lazzetti, 1998; Presutti, 2001).[9] Contamination of public areas with dog feces, urine and hair, especially from stray dogs that have never had veterinary care, is a danger to human health.[10]

A. ASPECT OF DETERMINATION OF DOGS WITH ACCENT TO STRAY DOGS ON THE PSYCHOLOGY AND MENTAL STATUS OF THE ATTACKED PEOPLE

Different physiological needs, as well as some specific circumstances in stray dogs, especially from the third and fourth groups according to the WHO, influence that these categories of animals view human beings as their potential prey.[11] In urban areas, these animals produce noise (barking) and consequently usurp the social peace of people. In addition to usurping social peace and inflicting bodily injuries through bites, people often experience long-term psychological trauma during dog attacks. Thus, dog attacks on people with and/or without bites often lead to intense fear, horror and helplessness. They stimulate the reaction of adrenaline in the human body, which results in action to flight or fight. Ultimately, it can lead to many symptoms of so-called Post Traumatic Stress Disorder (PTSD).[12] The most vulnerable group are undoubtedly

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9 KATICA, Muhamed/OBRADOVIĆ, Zarema/AHMED, Nasreldin Hassan/DERVIŠEVIĆ, Emina/DELIBEGOVIĆ, Samir, „Dog Bites and Their Treatment in Federation of Bosnia and Herzegovina“, J Med Sci, No. 4(2), Cyprus, 2019., pp. 136-40. and KATICA, Muhamed/KAPO, Nadža/AHMED, Nasreldin Hassan/KAPO-GURDA, Anida/KAPO, Safet, „Dog bites and attacks on athletes: lack of effective prevention mechanisms“, Med Glas, No. 18(2), Zenica, 2021., pp. 338-342. DOI: 10.17392/1344-21

10 Katica, pp. 52-54.

11 BORCHELT, Peter L./LOCKWOOD, Randall/BECK, Alan M./VOITH, Victoria L., „Attacks by packs of dogs involving predation on human beings“, Public Health Report (Washington, D.C.: 1974), No. 98(1), 1983., pp. 57-66.

12 ANYFANTAKIS, Dimitrois./BOTZAKIS, Emmanouil./MPLEVRAKIS, Evangelos./SYMVOULAKIS, Emmanouil K./ARBIROS, Ioannis., „Selective mutism due to

children, and in this aspect the risk that arises from this relates to their psyho-physical health. Unfortunately, pediatric care in most cases underestimates such events.[13] The exact cause of PTSD in some children has not been fully elucidated. But it certainly corresponds to the intensity, character and severity of the dog's attack.[14] In the most severe variant, children who have had violent and/or multiple dog bites often have gereogeneous developmental disorder characterized by distraction, impulsivity, irritability and hyperactivity, as well as an obvious lack of attention.[15] Disorder in people, such as attention-deficit/hyperactivity disorder (ADHD), after a dog attack, requires priority treatment in terms of including psychotherapy.[16] And sportsmen, especially athletes, are not spared from dog attacks during training and even during official competitions. Particulary unfavorable psychological effect can be suffered by active, professional athletes, which can be automatically unfavorably repercusse their results during the competition.[17]

2. LEGAL FRAMEWORK FOR REGULATION OF COMPENSATION FOR DAMAGES DONE BY STRAY DOGS

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a dog bite trauma in a 4-year-old girl: a case report", J Med Case Rep, 2009; 3:100.; ZIEGLER, Michael F./GREENWALD, Michael H./De GUZMAN, Michael A./SIMON, Harold K., „Post-traumatic stress responses in children: awareness and practice among a sample of pediatric emergency care providers", Pediatrics, 2005., 115:1261-7. and KATICA, Muhamed./OBRADOVIĆ, Zerema../AHMED, Hasan Nasreldin./MEHMEDIKA-SULJIĆ, Enra. /STANIĆ , Žana./MOHAMED, Abdalaziz Seifeldin Rowida./DERVIŠEVIĆ, Emina. Medicinski Glasnik (Zenica). 2020 No.17(2): pp. 246-251.

13 PETERS, Vincennt./SOTTIAUX, Martine./APPELBOOM, Jocelyne./KAHN, Andre. „Posttraumatic stress disorder after dog bites inchildren", Journal Pediatrics, No. 144., 2004., pp. 121-2.

14 Katica/Obradović/Ahmed/Mehmedika-Suljić/Stanić/Mohamed/Dervišević, pp. 246-251.

15 Peters/Sottiaux/Appelboom/Kahn, pp. 121-2.

16 ŞAHIN, Berkan./BOZKURT, Abdullah ./KARABEKIROGLU, Koray., „Sleep problems in children with attention deficit hyperactivity disorder", Duzce Med J, 2018., 20:81-6. and YEHUDA, Rachel. „Current status of cortisol findings in posttraumatic stress disorder", Psychiatr Clin North, 2002., 25:341-68.

17 Katica/Kapo/Ahmed/Kapo-Gurda/Kapo, pp. 338-342.

Law on Obligations of the Federation of Bosnia and Herzegovina[18] does not state exhaustively what the term „*dangerous things*" encompass. Thus, dogs as dangerous animals are not defined under the above term, but ZOO states that damage caused in connection with a dangerous activity is considered to originate from that object/activity unless it is proven that they were not cause of the damage.[19] Damage from objects or activities, which give rise to an increased risk of damage to the environment, is liable regardless of fault.[20] In order for the injured party to be entitled to compensation, it is sufficient to prove that he has suffered damage and that it originates from a dangerous object or dangerous activity. Moreover, the ZOO also relieves him of the duty to prove the fact that the damage was caused by a very dangerous object, ie a dangerous activity, if they materially participated in the harmful event. In other words, the ZOO prescries the presumption that the cause of damage caused in connection with a dangerous thing, ie activity, is that thing, ie activity. This assumption is relative and can be refuted by contrary evidence.[21]

The ZOO prescribes that the owner of the thing is responsible for the damage from the dangerous thing, and the owner of the thing or the

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18 Law on Obligations of the Federation of Bosnia and Herzegovina, later on in the text: Federation of BiH, Official Gazette of SFRY, No. 29/1978. ,39/1985., 45/1989. – desicion USY and 57/1989., Official Gazette of the Republic of BiH, No. 2/1992., 13/1993. and 13/1994. and Official Gazette of the Federation of BiH, No. 29/2003. and 42/2011. Later on in the text: ZOO. Available at:

https://www.paragraf.ba/propisi/fbih/zakon-o-obligacionim-odnosima.html

19 This prvision is contained in Art. 173. of the ZOO, and the rules of strict liability are attached to it. If there is damage on the basis of strict liability, the injured party must prove the existence of damage, and that the damage originates from a dangerous object. See more: BIKIĆ, Abedin, Obligaciono pravo-opći dio, Pravni fakultet Univerziteta u Sarajevu, Sarajevo, 2007., pp. 217.

20 According to Art. 154. pp. 2. of the ZOO liability for damage caused by a dangerous thing or dangerous activity is not based on guilt, but on the risk created. It is independent of guilt.

21 The legal presumption that a dangerous thing is the cause of damage can be refuted by proof that the damage was caused by force majeure (*vis maior*), by the action of the injured party or a third party (Art. 177. pp. 1. i 2. of the ZOO). See more: PEROVIĆ, Slobodan, Komentar Zakona o obligacionim odnosima-knjiga prva, Savremena administracija, Beograd, 1995., pp. 401-402.

social legal entity that has the right of disposal, ie to whom the thing was given for temporary use, is considered the owner.[22] However, it is very important to emphasize here that the thing that caused the damage can belong to one person, and that it is used by another person at the time of causing the damage. Therefore, we can talk about primary and secondary responsibility.[23] As the ZOO prescribes that the possessor is liable for damage from a dangerous object, thus accepting the view that the holder of that object is primarily responsible, because „possessor" and „holder" have the same meaning in this context.

In the case when the dangerous object has been confiscated from the possessor i an illegal manner, he is not responsible for the damage caused by it, but the one who confiscated the dangerous object, if the possessor is not responsible for it.[24] Dakle, neovlašteni držalac će

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22 Art. 174. of the ZOO.

23 Prof. Slobodan Perović states (Perović, pp. 403.) that primary responsibility is tied to a particular category of people, but that category is not the same in all legal systems. Some legal systems put the holder in the foreground, others the owner, and still others the possessor of dangerous things. In a number of legal systems in European countries, its holder is primarily responsible for damage from dangerous objects. This means that the responsible person is not determined according to the formal, but according to the material criteria. It is not predetermined, but only determinable, and the determination is made based on the idea that the damage caused by a dangerous object should be attributed to those who use it in their own interest and who are able to eliminate the danger of damage. See also: KOZIOL, Helmut/RUMMEL, Marcus-Florian, Österreichisches Haftpfichtrecht Band II, Besonderer Teil, 2. Auflage, Wien, 1984., pp. 528. The holder is, therefore, the person who has the true power to dispose of objects. In most cases, it is its owner. However, property and other legal relations regarding the matter are not decisive for the notion of the holder, although they may be an indication. Short-term of giving objects to another does not lose the status of the holder in terms of the responsibility, because the holder must be in a position to prevent damage from the property by appropriate measures, and this is not possible for those who only temporarily use the object. The notion of the holder of objects presupposes a lasting relationship, but it is not known in advance how long that relationship should last. The teory simply does not want to generalize the time of the state, but it requires that the circumstances of the case be taken into account. See: Koziol/Rummel, pp. 531. Better said, there is no strong rule about who is considered the holder of the object, which would apply to all cases and exclude any doubt.

24 According to the provisions of Art. 175. ZOO. In the sense of the above mentioned, it should be pointed out that if the possessor, without knowledge or against his will, is deprived of the state's property, ie if he unlawfully took something from

odgovarati umjesto imaoca. But if the possessor, through his own fault, enabled the illegal holder to obtain dangerous thing, then he is jointly and severally liable with him.[25]

Instead of the possessor of the object, and just like him, the person to whom the possessor entrusted the object to use is responsible, or the person who is otherwise obliged to supervise it and is not working with him. But the possessor of the object will also be liable if the damage resulted from some hidden flaw or hidden property of the object that he did not draw his attention to. In that case, the responsible person who paid the compensation to the injured party has the right to demand the entire amount from the possessor. The possessor of a dangerous object who has entrusted it to a person who is not qualified or authorize to handle it, is liable for the damage resulting from that object.[26]

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him, the reasons for his responsibility have disappeared. However, the conditions were also met for the responsibility of the person who unlawfully confiscated the object, who became its unauthorized holder. Seizure of another's property is also a criminal offense, but the criminal responsibility of the delinquent is not a condition of his civil responsibility. There are no motives of an unauthorized holder that would be able to justify his actions (for example, a state of extreme necessity, etc.), because confiscating someone else's property as a means to an end is impermissible and leads to an unauthorized state. According to: OFTINGER, Karl, Schweizerisches Haftpflichtrecht, II/2, Zürich, 1970., pp. 576. and Perović, pp. 404.

25 Enabling such a position means creating more favorable conditions for it to be acquired. The possessor is considered guilty when he did not keep the object with average care, when he did not take the necessary measures to prevent the unauthorized use of the object. If the possessor settles the injured party, he can be reimbursed by the unauthorized holder for the entire amount paid, because he is not quilty for losing te state property to the unauthorized holder, but to the injured party. More: BECKER, Helmut, Kraftverkehrs Haftpflichtschäden, 12. Auflage, Karlsruhe, 1973., pp. 60 and Perović, pp. 405.

26 According to Art. 176. of the ZOO. The mentioned provision covers persons who are secondarily responsible for damage from dangerous objects. But this is the responsibility of the authorized holder, ie the person who keeps the dangerous object on some legal basis, with the knowledge and will of the possessor. Two categories of persons have the status of authorized holder: those to whom the possessor has entrusted the thing to use and those to whom the possessor has handed over the thing for some other reasons with the obligation to supervise it (for example, veterinarians, animal hospitals, etc.). However, the position of the authorized holder is not held by the persons to whom the possessor has entrusted the thing as his employees. It is important to mention that the ZOO prevents entrusting a dangerous object to a person who is not trained or authorized to handle it. The possessor who

The possessor is released from liability if he proves that the damage originates from some cause that was outside of the object, and which effect could not have been foreseen, avoided or eliminated. Also, the possessor of the object is released from liability if he proves that the damage was caused exclusively by the action of the injured party or by a third party, which he could not foresee and whose consequences he could not avoid or eliminate. The possessor is partially released from liability if the injured party has partially contributed to the damage. If the damage was partly contributed by a third party, he is liable to the injured party in solidarity with the possessor of the object, and he is obliged to bear compensation in proportion to the gravity of his guilt. The person used by the possessor in the use of the thing is not considered a third party.[27]

The question that arises is it why it is important to define and place a dog within the concept of a dangerous object. As BiH law leaves it to the jurisprudence to decide in each case which things and activities are considered dangerous, there is a legally recognized area of responsibility. Therefore, the damage caused by a dog according to the provisions of the ZOO is subsumed under certain norms on liability for damage, and with such a definition connects the type of liability of the "respon-

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does so still acts at his own risk and is therefore solely responsible for the damage resulting from the property. More: Perović, pp. 405-406.

27 According to Art. 177. of the ZOO. Liability for damage caused by a dangerous object is increased, but not unconditional. The possessor has the option to avoid liability if he proves that the damage is due to certain circumstances. These circumstances include force majeure, the action of the injured party and the action of a third party. Having proved the fact that some of these circumstances is the real cause of the damage, and that the dangerous object had only a passive role, the possessor overturns the legal presumption of causality prescribed by the provision of Art. 173 of the ZOO. Such circumstances must be unpredictable, unavoidable and external. Also, it is envisaged to exclude the liability of the possessor of the dangerous thing by the action of the injured party and a third party. The actions of the injured party and the third party should be unpredictable and unavoidable for the possessor of the dangerous object, to represent a kind of force majeure (Bulletin of the Supreme Court of Macedonia, No. 23/1966, pp. 4-5.). In addition to the above, it should be emphasized that the partial contribution of the injured party to the occurrence of damage entails a proportional reduction of the liability of the possessor of the dangerous object. More: Perović, pp. 407-408.

sible person" for certain illegal actions under this law, as well as the type of sanctions which comes as the result of cause-and-effect action.[28]

In the context of the previous allegations, it is necessary to mention the definition of the Law on Real Rights of the Federation of BiH[29] from the provision of Art. 6, paragrph. 7, which stipulates that animals are not objects, but everything that applies to things applies to them, unless otherwise provided by law, and in connection with the provision of the same Act of the same article but paragraph 1 which is the subject of property rights individually determined immovable (real estate) or movable (movables) thing, except for those that are not suitable for it or not otherwise determined by law. Therefore, dogs from the aspect of the mentioned regulation are considered movables over which the ownership regime has been established. If we were to engage in further theorizing in the spirit of defining property that includes all subjective property rights that belong to a particular subject, it could be concluded that dogs represent property that belongs to its owner.

When it comes to keeping dangerous animals, more precisely dogs, the Regulations on keeping dangerous animals speaks in more detail[30], and the term dangerous dog, as prescribed by Article 2 of the

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28 From the aspect of the provisions of the ZOO of the Federation of BiH, it is left to the court's assessment in each specific case to determine a dangerous object, and if an attempt was made to define a dangerous object, the definition would have to be resorted from prof. Mihailo Konstantinović (*Skica za Zakonik o obligacijama i ugovorima*, Centar za dokumentaciju i publikacije Pravnog fakulteta Univerziteta u Beogradu, Beograd, 1969. in Art. 136. pp. 1.), and according to which "a dangerous object can be any movable or immovable thing which, due to its position, use, or some other property, represents an increased danger to the environment." Furthermore, prof. Abedin Bikić (Bikić, pp. 217.) states that "domestic animals (eg dogs or horses) are not dangerous objectss in principle, but due to the unpredictability of their behavior, they can also be dangerous objects." The dangerous object is the legal standard, which is set as an open question and can be changed if necessary. Therefore, the ZOO did not determine the list of dangerous objects, because such a list would always be incomplete and temporary.

29 Law on Real Rights of the Federation of BiH, Official Gazette of the Federation of BiH, number: 66/13 and 100/13.

30 The Regulations on keeping dangerous animals of Bosnia and Herzegovina, Official Gazette of BiH, No. 27/10. (hereinafter: the Regulations), available at: http://www.sluzbenilist.ba/page/akt/Axb5WLlI05A=

Regulation, is a unit of that species, originating from any breed that unprovokedly attacked a man and inflicted bodily injuries or killed him, unintentionally attacked another dog and inflicted grievous bodily harm, bred or trained for dog fights or caught in organized fights with other dogs.

The before mentioned Regulation unequivocally stipulates that the owner of a dangerous/potentially dangerous animal is obliged to keep the animal in accordance with the regulations on the protection and welfare of animals, veterinary medicine, nature protection, public order and peace.

Also, the Regulation defines the conditions that must be met by a dog *owner* where it is stated that dogs from controlled breeding of bull terrier breeds - Staffordshire Bull Terrier, American Staffordshire Terrier, Bull Terrier and Mini Bull Terrier, namely: that is older than 21 years, that is capable of business, that he has conditions for safe accommodation for a dangerous dog, that no criminal proceedings have been instituted against him, as well as that he has not been convicted of certain offenses and criminal offenses, and that there are no other circumstances that indicate that the dog could have been abused.

Accordingly, we can state that only keeping dangerous animals requires the need to comply with certain rules and a certain dose of responsibility, and beyond the continuation of potential damage from the actions of dogs.

It is important to emphasize that the Regulation does not clearly state or distinguish the characteristics of a person who keeps dogs, and the term dog owner remains in the light of broad meaning, and since the Regulation does not recognize the terms and differences in dog owner, dog possessor, dog breeder, temporary dog possessor/owner/breeder, this also entails certain difficulties in identifying responsibility for the actions of such persons for the treatment of dogs.

At the same time, Articles 2 and 3 of the Regulation on Breeding and Registration of Dogs in the Pedigree Book of the Kennel Club of

BiH[31] defines the term *dog owner*. *Owner* is the person who acquired the female dog or the dog in a lawful manner, who is in the undisputed ownership of the female dog or the dog and who can prove it by the lawful ownership of the original pedigree. *Breeder* is the owner of the female dog at the time it is mated, unless the ownership has been transferred in writing to the new owner and the *temporary owner of an educational unit* retains all educational rights and obligations as well as the owner for the duration of the contract on the assignment of educational rights.

Law on Protection and Welfare of Animals of BiH[32] recognizes and defines *possessor or animal owner* as a physical or legal person or any other person who is permanently or occasionally the owner of the animal, responsible or in charge of the animal, or responsible for the care and control of children under 16 who have an animal, or engaged in breeding, protection, use, managing, training, transporting or selling animals.[33]

From the above it follows that for terms *dog owner/breeder/temporary owner of an educational unit* there is a need to classify them under one unified term, and that is – *dog owner* and on this basis for the actions of these dogs we can insist on the appropriate responsibility of the respon-

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31 See at: http://www.kinoloskisavez-hb.com/Datoteke/Download/pravilnik-o-uzgoju-i-upisu-pasa-u-rodovnu-knjigu-ksbih.pdf

32 Law on Protection and Welfare of Animals of Bosnia and Herzegovina, Official Gazette of BiH, number: 25/2009., 9/2018. Available at: http://www.vet.gov.ba/pdffiles/zakon_dobrobit_ziv/Zakon_o_zastiti_i_dobrobiti_zivotinja_hr.pdf

33 It should be noted that local self-government units (municipalities and cities) in BiH make decisions of municipal and city councils which complete the legal framework for breeding and management of animals, so, for example, the city of Cazin, then Cazin municipality, prepared a Draft of Decision on keeping and protection of domestic animals and pets in the municipality of Cazin. According to the said Decision, stray dogs are unregistered and unmarked animals that are not taken care of and that roam the streets and other public areas without supervision. For the purposes of this Decision, the holder of an animal is considered to be any physical or legal person who is the owner of the animal, or who is permanently or occasionally responsible or in charge of the animal. The holder of the animal cannot be a person under 18 years of age. Downloaded from: https://gradcazin.gov.ba/dokumenti/

sible persons – *dog owners* which is prescribed by the positive legislation of BiH.

The question arises as to why the characteristic of the person responsible for the treatment of dogs is important. It can be said that this classification is important because of the responsibility for the damage caused, and for which according to Art. 174 of the ZOO of the Federation of BiH, its possessor is responsible.[34]

Judicial practice has made a great contribution to clarifying the concept of "dangerous objects" and bringing dogs under this legal concept.[35]

Accordingly, we can say that a clear classification of the person responsible for the dog, dangerous dog and his actions leaves less room for case law to have conflicting opinions and views in the interpretation and adjudication of individual legal cases.

When it comes to the treatment of dogs in relation to their owners, the Criminal Code of BiH[36], as a state regulation, does not specify certain

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34 *Supra.*

35 Since the ZOO does not provide a definition of a dangerous object, a more specific definition of this term can be found in case law, so in the Decision of the Supreme Court of the Republic of Croatia, no. Rev 190/2007-2 od 27. ožujka 2007. it is pointed out that dangerous objects are those „which by their purpose, properties, position, place and manner of use or otherwise constitute an increased risk of damage to the environment, and must be monitored and used with increased care". Court decision that should clarify what is considered a dangerous object, and relate to a dog that moves on a public road without the control of the owner (Varaždin County Court, no. Gž-2997/15-3 od 10. ožujka 2016.). Thus, the case law shows that the matter may pose an increased risk of causing damage due to its characteristics or its nature, which is especially noticeable in the example of animals (whether domestic or wild) because their behavior is only partially predictable or completely unpredictable. See more: Čižmeš, Željko, Opasna stvar – primjeri iz sudske prakse (Available at: www.iusinfo.hr/aktualno/u-središtu) Supreme Court of the Federation of BiH, judgment of the Supreme Court of the Federation of BiH number: 43 0 Ps 024729 11 Rev from 16.05.2013., Bulletin of case law of the Supreme Court of the Federation of BiH, number 1-2., January-December 2013., Official Gazette of BiH. Available at: https://www.pravosudje.ba/vstv/faces/docservlet?p_id_doc=26746

36 Criminal Code of Bosnia and Herzegovina, Official Gazette of BiH, no. 3/2003., 32/2003. -cor. 37/2003., 54/2004., 61/2004., 30/2005., 53/2006., 55/2006., 8/2010., 47/2014., 22/2015., 40/2015. and 35/2018. Available at: https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html

actions that are closely related to the actions and responsibilities of dog owners, and only through the provisions of the Criminal Code of the Federation of BiH[37], as an entity regulation, Article 327 (unscrupulous guarding of dogs and other dangerous animals) paragraph 1. says that whoever takes dogs or other animals to places without a prescribed muzzle or adequate protection and without direct guarding and thus endangers life or body or property, shall be punished by a fine or imprisonment for up to 6 months, and if physically injured, the perpetrator will be punished by imprisonment for up to 3 years.

With this article of the Criminal Code of FBiH, the legislator does not recognize the perpetrator of this crime as a dog owner but as a responsible person and based on that responsibility prescribes two types of penalties that are already deeply rooted in BiH criminal regulations, namely: imprisonment and fines.

It is necessary to emphasize that the Criminal Code of the Republika Srpska[38] does not know this same act which is classified as an act of negligent keeping of dogs and other dangerous animals, while the Criminal Code of the Brčko District of Bosnia and Herzegovina in its Criminal Code[39] knows an identical criminal offense, as referred to in Article 321 as prescribed by Article 327 of the FBiH Criminal Code.

The Law on Protection and Welfare of Animals categorizes the actions of the owner of an animal/dog that keeps animals/dogs dangerous

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37 Criminal Code of Bosnia and Herzegovina, Official Gazette of the Federation of BiH, number: 36/2003., 21/2004., 69/2004., 18/2005., 42/2010., 42/2011., 59/2014., 76/2014., 46/2016., 75/2017. Available at: https://www.paragraf.ba/propisi/fbih/krivicni-zakon-federacije-bosne-i-hercegovine.html

38 Criminal Code of the Republika Srpska, Official Gazette of RS, no. 64/2017. and 104/2018. Available at: https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html

39 Criminal Code of Brčko District, Official Gazette of the Brčko District of BiH, No. 19/2020. Available at: https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html

to life as *offence*, and provides for a fine in the amount of 300 to 10,000 KM[40].

Since the attack of dogs can have certain psychological consequences for another person, and accordingly we can say that in addition to the criminal sanctions we have listed on the basis of legal regulations that are closely related to this area, the other injured party may seek compensation for non-pecuniary damage, to achieve the same through the competent court within the civil procedure. In addition to regulating non-material damage, the ZOO also provides special provisions on compensation for material damage in the event of death, bodily injury and damage to the health. Namely, whoever causes someone's death is obliged to reimburse the usual costs of his funeral. He is also obliged to reimburse the costs of his treatment of injuries and other necessary expenses related to the treatment, as well as the income lost due to incapacity for work. Also, the right of the person who was supported by the deceased is envisaged. A person who was supported or regularly assisted by the deceased, as well as one who was legally entitled to demand maintenance from the deceased, is entitled to compensation for the damage he suffers from the loss of support or assistance. This damage is compensated by the payment of an annuity, the amount of which is measured in view of all the circumstances of the case, and which cannot be greater than what the injured party would have received from the deceased if he had survived. Whoever inflicts bodily injury on another or impairs his health, is obliged to reimburse him for the costs of treatment and other necessary expenses in this regard, as well as the income lost due to incapacity for work during treatment. If the injured person loses his earnings due to complete or partial incapacity for work, or his needs are permanently increased, or the possibilities of his further development and advancement are destroyed or reduced, the responsible person is obliged to pay a certain rent to the injured party.[41]

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[40] The monetary unit of BiH is convertible mark, whose symbol is„KM“, ie the international designation is „BAM“.

[41] The court may, at the request of the injured party, increase the annuity for the future, and may reduce or cancel it at the request of the injured party, if the circumstances that the court had in mind when making an earlier decision change signifi-

The term non-pecuniary damage refers to damage that affects a person, ie his life, body, freedom, honor, private life, and which can be claimed in the form of compensation in civil law.

Recognition of the occurrence of non-pecuniary damage and its compensation is an expression of a person's mental life, as well as the need to protect the human person in a particular cultural environment.[42]

Today, the ZOO overlooks compensation for non-pecuniary damage, so Art. 154 paragraph 1 states that the person who caused the damage is obliged to compensate it unless he proves that the damage occurred through no fault of his, and for damage from things or activities from which the increased danger to the environment arises, is liable regardless guilt.

Non-pecuniary damage can be repaired by non-monetary compensation, ie moral satisfaction or monetary compensation. Until 1953, the law of BiH did not recognize monetary compensation for non-property damage, but now it accepts the so-called a positive theory of monetary compensation for non-pecuniary damage, as evidenced by existing legislation.

Non-pecuniary damage in the ZOO means physical pain, mental pain and fear, so monetary compensation can be awarded only when the injury manifested itself in one of the following forms.

According to the provisions of Art. 200-203. of the ZOO of the Federation of BiH monetary compensation can be awarded for already suffered and for future forms of non-pecuniary damage: physical pain, fear, mental pain due to reduced life activities, mental pain due to impairment, violation of reputation and honor, freedom, personality rights, death of a loved one serious disability of a close person and for a crime against sexual integrity, dignity or morals.

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cantly. The right to compensation in the form of monetary annuity due to the death of a close person or due to bodily injury or damage to health cannot be transferred to another person. Due amounts of compensation may be transferred to another, if the amount of compensation is determined by a written agreement of the parties or a final court decision. Listed under the provisions of Art. 193-197. of the ZOO.

42 Abedin Bikić, Naknada štete, Pravni fakultet Univerziteta u Sarajevu, Sarajevo, 2010., pp. 26.

According to the case law, the orientation criteria for non-pecuniary damages are not a mathematical formula that is used automatically to determine and calculate fair monetary compensation, because deciding on the amount of non-pecuniary damage is a trial in which the legal standard of fairness is applied.

The consequence of the attack of dogs as dangerous animals can be manifested as mental pain, for which the case law of the Supreme Court of the Federation of BiH[43] determines that mental pain due to impairment of general vitality from Art. 200 of the ZOO awards as a form of non-pecuniary damage only if the consequences of the injury the injured party feels in his spiritual sphere and which manifests itself as mental pain. Such pain can be experienced if the injured party has remained incapable of work or his working abilities have been reduced or his ability to advance in the profession has been destroyed, or he is unable to engage in activities that he performed until the injury or his needs have significantly increased.[44] Also, the mental pain suffered may take the form of distress.[45]

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[43] Stručni i informativni časopis za sudsku, upravnu, privredno-prekršajnu praksu, godina XVI, br. 79, januar, februar i mart 2019, Privredna štampa d.o.o. Sarajevo, str. 119., a prema presudi Vrhovnog suda Federacije BiH, broj: 65 0 P 233771 16 Rev od 11. 12. 2018. godine.

[44] Reduction of vital activities occurs if the possibility of functioning of the organ as a whole or one of its parts is reduced due to a bodily injury in the injured party. As a result of the bodily injury, the victim's mental pain arises. He may experience this pain due to reduced working ability, inability to advance in the profession, inability to engage in other activities in his spare time, making increased efforts to perform life activities, etc. Whether life activity is reduced is determined after treatment. If, due to the injury, after the completion of the treatment and the final judgment of the compensation for non-pecuniary damage, the vital activity is reduced, the court may, at the request of the injured party, subsequently award compensation on this basis. Life activities can also be diminished as a result of the fear suffered. In that case, in addition to compensation for non-pecuniary damage due to the fear suffered, the injured party is also entitled to compensation for non-pecuniary damage due to impairment of vital activity. (Such a position was correctly taken by the District Court in Valjevo (Serbia) in the Judgment Gž. 600/2006 from 13. April 2006.: „If the suffered fear left permanent consequences and thus led to a reduction in life activity, in addition to compensation for the fear suffered, the injured party is also entitled to compensation for mental pain due to reduction of life activity.“ – Published in Sudskoj praksi paragraph Co, downloaded 10. January 2008. from www.paragraf.co.yu). Relevant circumstances for awarding monetary compensa-

tion for non-pecuniary damage due to mental pain are: the severity of the pain and its duration (whether the mental pain lasted a certain time or lifelong), type and severity of injury (ie percentage of disability), age of the victim will feel pain for a longer time due to reduced vital activity, occupation of the injured party, etc. According to: BABIĆ, Ilija, *Obligaciono pravo*, Opšti dio, Fakultet za europske pravnopolitičke studije Univerziteta Singidunum i Službeni glasnik, Beograd-Sremska Kamenica, 2009., pp. 259-260.; CRNIĆ, Ivica: „Naknada nematerijalne štete – Neka pitanja", Godišnjak, br. 9.; „Aktualnosti hrvatskog zakonodavstva i pravne prakse", br. 17., Opatija, 2002. i „Oblici nematerijalne štete i kriteriji za odmjeravanje pravične novčane naknade", Naša zakonitost, br. 10., Zagreb, 1986.; PETROVIĆ, Zdravko, Naknada nematerijalne štete zbog povrede prava ličnosti, Vojna knjiga, Beograd, 1996., str. 97. i STANKOVIĆ Obren, Naknada štete, Nomos, Beograd, 1998., str. 143.

45 Impairment is a visible deformation of the physical integrity and harmony of an individual due to complete or partial loss of a limb, scars or other changes in the body that impair the appearance of that person (compared to the appearance that existed before the deformation). The mere violation of the integrity and harmony of the body is not the basis for awarding compensation for non-pecuniary damage but the mental pain suffered by the injured party. In case law and legal literature, impairment is interpreted as a general term, which includes: severe impairment, moderate impairment and mild impairment. Compensation for non-pecuniary damage is awarded for all degrees, but the strength of the degree of damage affects the measurement of the amount of compensation for non-pecuniary damage. The court will not award compensation for this damage if the damage is insignificant. The amount of compensation for non-pecuniary damage is affected by other circumstances, not only the degree of damage. A higher amount of compensation should be awarded for damage that cannot be concealed, such as facial damage, severe lameness, etc. The right to compensation also belongs to a person who can cover the damage (clothes, shoes, hat, hat, etc.). This impairment becomes visible under certain circumstances - during intimate relationships, on the beach, with family, due to a different way of dressing, etc. In these cases, the victim will suffer mental pain and is entitled to compensation for non-pecuniary damage due to impairment. The age and sex of the injured party affect the amount of compensation for non-pecuniary damage due to damage. Children who are not yet aware of the damage are also entitled to compensation for this damage, if it is certain that this damage will continue in the future and result in mental pain of the injured party (future damage - Article 203 of the ZOO). When assessing compensation for non-pecuniary damage, the court must determine the severity of the mental pain suffered by the injured party, given the sex and sensitivity of the injured party. Judicial practice justifiably takes the position that the profession of the injured party is also important for determining the amount of damages if appearance is important for its performance - models, actors, singers, players, etc. was the former appearance of the injured party (by inspecting photographs, films, etc.), and the court should, in addition to hearing an expert witness of the relevant profession, obtain information directly about the appearance of the injured party - by inspecting the courtroom or other suitable room, respecting the rights of the injured party. According to: Babić,

In addition to mental pain, the victim also suffers from physical pain.[46]

When it comes to non-pecuniary damage and compensation of claims of this kind in the Republic of Croatia, we can say that each legal case is assessed separately in accordance with the circumstances and legally relevant facts. The field of this assessment is very wide, which results in different case law between different legal systems and between different courts of the same state, as well as the departments and councils of individual courts. Generally speaking, two methods can be used to determine compensation for non-pecuniary damage: objective

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pp. 260-261.; Crnić, pp. 1325., Petrović, pp. 102. and SALMA, Jožef, Obligaciono pravo, Naučna knjiga, Beograd, 1988., pp. 445.

[46] Physical pain occurs due to some organic injury or disorder of the organism. Pain is a special area for feeling, tied to a special sense. Pain receptors are sensitive nerve endings that branch under the surface of the body and inside. There are separate sensory points on the skin for pain, touch, cold and heat. Taken from: *Medicinska enciklopedija*, Jugoslovenski leksikografski zavod, tom I, Zagreb, 1967., str. 483. Pain is a highly subjective experience and it is not possible to estimate how much its manifestation is proportional to the actual stimuli. Taken from: KRSTIĆ, Dragan, *Psihološki rečnik*, Savremena administracija, Beograd, 1991., str. 68. Awarding compensation for non-pecuniary damage to the injured party due to the suffered physical pain is provided by the provisions of Art. 200 para. 1 of the ZOO. They enable the court to concretize them in each individual case. Namely, the court will determine fair monetary compensation for non-pecuniary damage for the suffered physical pain "if it finds that the circumstances of the case, and especially the intensity of the pain and their duration, justify it". Any physical pain, therefore, is not a basis for awarding non-pecuniary damage. Whether he will award damages depends on the "circumstances of the case". From these circumstances, the ZOO singles out the severity of illness and their duration. The jurisprudence generally classifies pain into mild pain, moderate pain, severe pain, and pain of particularly high intensity. In doing so, the court should take into account other circumstances of the case, such as: the nature of the injury suffered by the injured party, the part of the body where the injury occurred, the inconvenience to which the injured party was exposed during treatment (the number of operations lying motionless, performing physiological needs in bed, pain during rehabilitation, difficulty in eating, etc.) and subjective characteristics of the victim. Compensation for non-pecuniary damage for physical pain suffered is additional compensation for damage in cases of bodily injury. According to: Babić, str. 258-259.; BLAGOJEVIĆ, Borislav (et al), *Komentar Zakona o obligacionim odnosima*, tom I, Savremena administracija, Beograd, 1980., pp. 536.; Crnić, pp. 1322., Petrović, pp. 88-95. and RADOVANOV, Aleksandar, „Pravična novčana naknada nematerijalne štete i stavovi sudske prakse“, Zbornik Aktuelni problemi naknade štete i osiguranja, Budva, 2004., pp. 79.

(abstract) and subjective (concrete). The objective method in determining compensation takes into account the average, the commonness of similar cases, while the subjective method determines all the circumstances and specifics of each case.[47]

3. COMPARATIVE LEGISLATION

Comparative indemnification rights (Croatian, Austrian, German and Spanish) are increasingly accepting strict liability for damages caused by dangerous objects. Namely, the Croatian legislation regulates this area in the same way as the law of Bosnia and Herzegovina.[48] The rules of strict liability apply to damages from dangerous objects and activities (Article 1045, paragraph 3 of the ZOO[49]) and damages in other cases prescribed by law (Article 1045, paragraph 4 of the ZOO). The ZOO did not define which things and activities are dangerous, but left the issue to court practice and legal theory.

In Austria, according to § 1320. ABGB[50], for damages from animals (whether domestic or not) their possessor is responsible. Although the provision does not mention the guilt of the possessor, it is unanimous that it is still required. Deviation from the classic concept of liability for damage is found in the second sentence, the possessor is agreed unless he proves that he has ensured proper keeping and supervision of the animal. Suitability is assessed in terms of objective criteria based on the characteristics of the animal itself. The absence of guilt does not absolve the possessor of responsibility. This "compromise between liability

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47 Taken from: BUKOVAC PUVAČA, Maja, „Deset godina nove koncepcije neimovinske štete“, Zbornik Pravnog fak. Sveučilišta Rijeka (1991) v. 36, no. 1, 157-180 (2015), pp. 166.

48 The reason for this is that the Republic of Croatia has transposed into its legal system the Law on Obligations of the Socialist Federal Republic of Yugoslavia (hereinafter: SFRY) from 1978, as well as all states created by the division of SFRY.

49 Law on Obligations of the Republic of Croatia, National newspaper, number 35/05., 41/08., 125/11. – Law on deadlines for fulfillment of financial obligations, 78/15., 29/18. and 126/21.

50 Allgemeines Bürgerliches Gesetzbuch iz 1811., in power from 1.1.1812. (JGS 946.).

based on guilt and strict liability" applies only when there was a special danger to the animal that occurred.[51]

And in the German tort law, the legislature has a number of provisons of the BGB[52] (§§ 831.-834., 836.-838.) which shifted the burden of proving the damage. The guilt of the pest is presumed and it is up to him to prove his guilt, either by proving that his conduct was appropriate given the attention generally sought in those situations, or by proving circumstances that make the harmful event inevitable regardless of appropriate conduct. He is therefore faced with the risk of a lack of evidence. These are, inter alia, the liability of owners of animals used for commercial or professional purposes and the liability of the owner of animals who supervise them on the basis of a contract.

According to Spanish Codigo Civil[53] the general principle of liability in tort law is liability based on guilt (Art. 1902), but cases of objective liability are found both in the CC and in many special liability regulations. However, there is no sharp dichotomy, on the one hand court decisions have led to stricter liability based on guilt (a process that began in the 1950s), and on the other hand the rules on strict liability do not have the same intensity in all cases.[54]

European expert groups have also been doing research in the field of tort law for years, and as a result are the Principles of European tort law, which define damage as a material and non-material violation of a legally protected interest. From the above we see that the institute of non-pecuniary damage has come to life in the European Union, but it is also specific that experts in drafting these principles were guided by legislation and case law in EU countries, and we see that it is very important certain institutes and legally define and regulate the concepts so

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51 KOCH, Bernhard, A./KOZIOL, Helmut, (eds.) et al., Unification of Tort Law: Strict Liability, Kluwer Law International, The Hague, 2002., pp. 10.

52 Bürgerliches Gesetzbuch from 18.8.1896., RGBl. S. 195

53 Spanish Civil Code from 1889 (later on in the text: *CC*)

54 See more: BUKOVAC PUVAČA, Maja, „Sive zone“ izvanugovorne odgovornosti-područja moguće primjene pravila o odgovornosti na temelju krivnje i objektivne odgovornosti za štetu, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, (1991), v. 30, no. 1., pp. 221-243. (2009)

that the courts have a foothold in resolving legal cases, and all the same important for the reason of harmonization of regulations and practice of our country with the acquis communautaire.

CONCLUSION

The manuscript presents, among other things, veterinary-epidemiological, psychological aspect of defining the concept of dogs with special reference to stray dogs, where it is systematically presented this type of animal, and with the legal aspect as a potential cause of non-material, but in some cases material damage.

From the legal aspect, the provisions of the Law on Real Rights, as well as the Law on Obligations and the Criminal Code are presented. Analyzing separately the provisions of the mentioned legal regulations, the cross-section of the understanding of animals, ie in the specific case of dogs, is given, as well as the responsibility for the damages caused by them. A system of norms according to which dogs are considered potentially "dangerous objects" was presented, as well as a legal regime for resolving the issue of liability for damages. Closely related issues for determining liability for damages are the determinations of possessors, holders, injured parties and third parties, as well as the use of dogs with the knowledge and will of the possessor or their illegal use. In addition to presenting legislative solutions, the legal framework for dealing with damages caused by "dangerous objects" in EU member states was presented. Ultimately, it is to be assumed that this current topic will be analyzed for a long time in all countries, because more and more situations in which animals and dogs are, both voluntarily and without the will of their owners, abandoned (earthquakes, floods, poverty, death of dog owners and other negative phenomena). The urgent need is to educate the population about the possibilities of taking care of unwanted dogs, which would also make a step forward in the prevention of harm to humans.

The necessary knowledge that the manuscript offers provides a safe environment and clear rules that people should adhere to in order for dogs to be "satisfied" and enjoy the protection and love we need to return for their loyalty to people. Their missions to protect people,

hunting uses, find explosives, find the injured, help the blind, etc., oblige us to do so. Human-dog interaction is important and necessary, so we believe that manuscript can be constructive for anyone who wants to encounter dogs.

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