

AN EFFORT TO INCREASE THE LEGAL PROTECTION OF ANIMALS IN THE SLOVAK REPUBLIC

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Abstract: The author deals with problems related to the protection of the animals in the Slovak Republic in this article. In the introduction, the author assesses the legal regulation of the protection of the animals in the Slovak Republic. Subsequently, the author discusses the legal regulation of the protection of the animals in the Slovak Republic and expresses its attitude towards the legal regulation of the protection of the animals in the Slovak Republic, underlining the possibility of adopting legislative changes. It is also concerned with the Amendment to the Protection Animal Act and with the practical problems associated with the Amendment to the Protection Animal Act.

Keywords: protection of the animals, Amendment to the Protection Animal Act, problems in application practice.

1 Introduction

A stimulus for writing this scientific article comes from the fact that nowadays, this topic is discussed by the wide public as well as the expert community in the Slovak Republic. The attention is paid especially to the legal status of animals in the Slovak Republic, as well as to the related legal protection of animals in the Slovak Republic.

This scientific article focuses specifically on legislation related to animal protection at the national level in the Slovak Republic. While evaluating this legislation, the attention is paid mainly to the ongoing legislative changes in the field of legal protection of animals in the Slovak Republic. After many attempts, considerations, and promises, the legislative changes started to be implemented by the Ministry agriculture and rural development of the Slovak Republic.

There are two basic legal regulations with the force of law related to the protection of animals in the Slovak Republic. These are Act no. 39/2007 Coll. on Veterinary Care, as amended (hereinafter referred to as the "Veterinary Care Act") and Act no. 300/2005 Coll. the Criminal Code, as amended (hereinafter referred to as the "Criminal Code"). Except these two mentioned basic legal regulations, there is other subordinate legislation¹.

The Veterinary Care Act, however, does not only deal with the legal protection of animals, but its subject matter is as follows:

- (a) the veterinary requirements for the health of animals, hatching eggs, semen, embryos, and ova of animals from the point of animal health as well as requirements for the protection of animals,
- (b) the veterinary requirements for products of animal origin, including animal by-products and derived products and selected products of plant origin, in order to protect the health of animals,
- (c) veterinary requirements for animals, hatching eggs, and products of animal origin, including animal by-products in order to protect human health,
- (d) the rights and obligations of natural and legal persons in the field of veterinary, as well as the professional veterinary activities and conditions of their realization,
- (e) the organization, competence and powers of authorities performing public administration in the field of veterinary
- (f) penalties for breaking the obligations laid down by this Act.

The Criminal Code governs a criminal liability for the animal abuse - Section 378 of the Criminal Code, as well as a liability

for neglecting the animal welfare - Section 378a of the Criminal Code.

However, the comprehensive animal protection legislation in the Slovak Republic is absent. Under the comprehensive legal framework, we understand both the definition of the concept of an animal, as well as the determination of the special legal status of animals and the determination of the requirements and conditions for the protection of animals against abuse; the rights and obligations of natural persons and legal entities in the field of animal protection; system, scope, and competence of the authorities performing public administration in the field of animal protection, as well as the measures and sanctions used to ensure adequate protection of animals in the Slovak Republic. The animal protection legislation is a standard in advanced countries of the European Union. What is more, in such countries, the animal rights have not only existed in the form of protection of life and health for a long time, but many European Union countries have legislation, which deals with animal welfare. In the Slovak Republic, even until today, we do not have separate legislation that would regulate the status of animals and their rights and obligations. The legal protection of animals in the Slovak Republic is only one of the parts of the Veterinary Care Act.

In view of the above, we think that the Slovak Republic has one of the weakest legal regulations providing legal protection for animals. Let us give you some examples. In the Republic of Austria, the basic legislation on the protection of animals constitutes a separate legal regulation - the "Bundesgesetz über den Schutz der Tiere (Tierschutzgesetz – TSchG)"². In the Czech Republic, the basic legal regulation of animal protection includes a separate legal regulation - "Act no. 246/1992 Coll. on the protection of animals against cruelty, as amended (Animal Welfare Act)". In the Republic of Poland, the basic legislation on animal protection is the "Ustawa z dnia 21 sierpnia 1997 r. o ochronie zwierząt, Ustawa z dnia 16 września 2011 r. o zmianie ustawy o ochronie zwierząt oraz ustawy o utrzymaniu czystości i porządku w gminach".

At the same time, one cannot forget the fact that in the Slovak Republic, there is the absence of legislation dealing with restriction and prohibition of performances with animals (scenting or domesticated) in circuses, or at least established precise rules and conditions under which animals can perform in circuses. The Slovak Republic is currently considered to be one of the most important countries of the European Union in terms of circuses in which animals perform since there is no legal regulation restricting the performance of animals in circuses.

On the contrary, in countries such as France, Germany, Hungary, and other countries of the European Union, animal circuses have already been completely banned or restricted. This means that these countries, in addition to the separate animal welfare legislation, there exists a separate legislation dealing with the prohibition or restriction of using animals in circuses. For example, in the Republic of Austria, the legislation on prohibition of using animals in circuses is as follows – BGBL II No. 489/2004 Regulation of the Minister of Health and Women on the protection, management and involvement of animals in circuses, variety shows and similar facilities (Animal Protection Regulation Circus - Tierschutz-Zirkusverordnung TSch-ZirkV); BGBL II No. 485/2004 Regulation of the Minister of Health and Women on the minimum requirements for the keeping of horses and equine, swine, cattle, sheep, goats, deer, llamas, rabbits, poultry, ostriches and fish culture (1st livestock Regulation - Tierhaltungsverordnung); BGBL II No. 486/2004 Regulation of the Minister of Health and Women on the keeping of vertebrates that do not fall under the first Livestock Regulation, on wildlife with special requirements on the keeping

¹ E.g. Decree of the Ministry of Agriculture and Rural Development of the Slovak Republic no. 143/2012 Coll. on the breeding of dangerous animals; Government Regulation no. 432/2012 Coll., which Lays down requirements for the protection of animals at the time of their killing; Decree of the Ministry of Agriculture and Rural Development of the Slovak Republic no. 123/2008 on details of the protection of pets and on the requirements for quarantine stations and animal shelters.

² Animal welfare Act.

and wildlife species for which keeping is forbidden for reasons of animal welfare (2nd Livestock Regulation - Tierhaltungsverordnung).

The importance of the discussed issue is highlighted by the fact that in the Slovak Republic, there are efforts for a "big" amendment to the Act on Veterinary Care. This amendment evolves mainly from the need to increase the legal protection of animals in the Slovak Republic. The amendment to the Act on Veterinary Care³ was prepared by the Ministry of Agriculture and Rural Development of the Slovak Republic (hereinafter referred to as "the Ministry"). Subsequently, following the preparation of the own text of the amendment to the Act on Veterinary Care, the Ministry initiated an inter-ministerial commentary procedure⁴.

The interest of the professional public and the general public in increasing the legal status of animals is enormous in the Slovak Republic, which was also reflected in the number of comments on the amendment to the Veterinary Care Act in the inter-ministerial commentary procedure. The number of mass comments⁵ on the amendment to the Act on Veterinary Care in the inter-ministerial commentary procedure is 1 and the number of ordinary comments on the amendment to the Act on Veterinary Care in the inter-ministerial commentary procedure is 195. The draft law has not been submitted for its approval to the National Council of the Slovak Republic yet. What is more, the inter-ministerial commentary procedure has not been completed by the Ministry, and the phase of evaluation is still in the process. In general, it is not common that the phase of commentary procedure lasts almost three months (to this date). On the one hand, this says about the considerable interest of the public in the discussed issue and, on the other hand, the number of comments raised in the inter-ministerial commentary procedure and the fact that this draft law does not reflect the needs of the area concerned also reflect the poor quality of the prepared draft law.

2 En effort to increase the legal protection of animals in the Slovak Republic

The Ministry of Agriculture and Rural Development of the Slovak Republic has prepared a new amendment to the Act on Veterinary Care, as a draft law amending and supplementing Act no. 39/2007 Coll. on Veterinary Care, as amended (hereinafter "the draft law"). Subsequently, after the own text of the amendment to the Act on Veterinary Care was prepared, the Ministry initiated an inter-ministerial commentary procedure.

The draft law was prepared by the government and sets out several fundamental tasks:

1. "The draft law sets out the relevant provisions on the identification and registration of animals, specifically dogs, in relation to the provisions on live findings of animals and on the placement of animals in shelters and quarantine stations. It also regulates the obligations of private veterinarians in relation to the identification and registration of pet animals".
2. "The draft law should simplify conditions and shorten the time period after which the former owner of the abandoned or lost animal loses the proprietary rights and the ownership is transferred to the state."⁶
3. "The draft law also deals with the situation when the animals are involved in circus performances. Specifically,

the draft law addresses checking the conditions and approving the circuses."⁷

4. "The draft law supplements the Civil Code in terms of the exclusion of a live animal from the definition of a thing as such, considering that the provisions on things will also apply equally to the live animals unless it is contrary to their nature."

The draft law itself not only fails to meet the stated objectives, which are involved in the reasoning report to the draft law, but in many cases, instead of transparent adjustments, it also brings confusion and the possibility of a various interpretations, which in the end will cause problems with its application in practice. At the same time, it should be noted that the draft law itself cannot be described as a "big" amendment to the Act on Veterinary Care, which will provide increased legal protection of animals in the Slovak Republic. The draft law amends and supplements some parts of the Act on Veterinary Care, but there are no major changes.

In view of the above, it is necessary to deal with the individual parts of the draft law, while paying attention to the most important changes in the Act on Veterinary Care. We evaluate positively the idea of major changes in the new legislation, however, the draft law itself we evaluate rather negatively.

2.1 The definitions of "holder" and "person entitled to dispose of animals"

Generally, in term of the issues of definitions of "holder" and "the person entitled to dispose of animals", it should be said that this solution cannot be considered the most appropriate. Also with regard to the regulations adopted in foreign countries, two entities are distinguished, i.e. the owner of an animal and the keeper of an animal. This of course also affects the relation of responsibility for the animal. Responsibility for the animal should be primarily placed on the owner, unless it is shown that at the time the offense was committed, someone else was responsible for the animal, whether by written or oral agreement, i.e. the keeper of the animal. By defining both the concept of the holder and, on the other, the concept of the person entitled to dispose of animals, application problems can occur in practice.

At the same time, the intends of the Ministry to define these two entities - the holder and the person entitled to dispose of the animal is not obvious. We have a negative opinion on these definitions since they will lead to practical problems in identifying whether there is a holder or a person entitled to dispose of animals. We also expect problems in the practice of the state authorities since the basic assumption is to determine the subject of law as well as whether the subject is an owner, holder or person entitled to dispose of animals. In view of the above, we suggest, within the proposals de lege ferenda, creating only two basic entities, as is preferred also by the legislation adopted in foreign countries, namely:

1. the owner - a person listed in the register or a person who may be identified as the owner also in another way than by being entered in the register, and
2. an entitled person - a person who can clearly prove that the animal is in their possession or care, or a person authorized to perform any legal acts on the basis of a proven act - adoption agreement, lease agreement, etc.

2.2 Prohibition of performances of animals in circuses

If the aim of the new legislation is to protect animals and our task is to eliminate the suffering of circus animals caused by dressage, transport, and inappropriate accommodation conditions (the three most serious problems), it would be appropriate to adopt legislation which broadens the prohibition on animal performances in circuses. The proposed legislation still has gaps

³ Act amending Act no. 39/2007 Coll. on Veterinary Care, as amended, and on amendments to certain laws.

⁴ Inter-ministerial commentary procedure – The Legislative process no. LP/2017/684

⁵ Section 14 paragraph 7 of the legislative rules of the Government of the Slovak Republic, cit.: "The contradictory proceedings with the representative of the public shall take place whenever the petitioner does not comply with a mass comment (with at least 500 persons identified). If a mass comment has been applied electronically via the portal, the list of persons who have identified with a mass comment may be sent to the submitter in a manner other than through the portal."

⁶ Reasoning Report – general part

⁷ Reasoning Report – general part

which may be misused by circuses, and the effort of the new law may not have its originally intended effects in the end.

Within the *de lege ferenda* proposals, we suggest that the definition which involves the prohibition of performance of animals in circuses is modified in a way, that any animal circus performance, further specified in the ministerial decree, is prohibited. The restriction should discourage the owners of circuses, as much as possible, to carry animals with them, since the problem is not just the performance but also exercise, dressage, transport, etc. In the proposed law, there is a problem with proving by the state authorities whether or not a demonstrated exercise was trained by man. For example, if the elephant moves across the ring and overcomes some obstacles, for the state authority it is difficult to prove whether it has been taught or whether it was just a natural overcoming of the obstacle. The legislation must be unambiguous in order not to allow different interpretations of the law.

Despite the above, it is necessary strictly adhere to the minimum standards for the size and furnishing of dwelling for the individual species (cats, bears, elephants, giraffes, primates) set out in Decree no. 143/2012 Coll. on dangerous animals breeding. E.g. lion or tiger requires: minimum enclosure size of 300 m², elevated places with shelter, conditions for climbing, sharpening their claws; a tiger also needs a swimming pool with a minimum depth of 1,2 m, indoor dwelling with a minimum temperature of 15 °C, shelter, conditions for isolation against aggressive individuals. The draft law, however, does not take into account all these aspects at all.

At the same time, despite lack of the law regulating circuses, there is still within the competence of the state body (the Regional Veterinary and Food Administration) to adopt an exemption despite the legal prohibition, which gives a permission for a circus to perform on the territory of the Slovak Republic. Such competence of the state authority - Regional Veterinary and Food Administration creates a situation in which the decision of the state authority is above the law and at the same time creates a space for corruption, which cannot be a purpose of any legislation. On the contrary, the legislation has to be designed to provide the smallest space for corruption.

2.3 Register of stray animals

First of all, the purpose of this register of collected stray animals is not obvious to us, since, according to the Decree no. 123/2008 Coll. the quarantines and shelters for animals have to keep records of trapped animals. Therefore, it is not clear to us why the central register of stray animals should be set up, when they also create the additional costs and administrative burden for the quarantine and shelters, while many of them are civic associations and their funding depends on donations from citizens only. This creates a duplicate obligation for quarantines and shelters, namely the obligation to keep records of stray animals and the obligation to enter data into the register of stray animals.

We consider such legislation to be inappropriate and unjustified. However, if such duplicate legislation enters into force, it has to be adjusted in the context of *de lege ferenda* so that this legislation does not obviate its intended effect. Therefore, we suggest, that the information regarding the operation, records and obligations arising from the creation of such a register is clearly specified and legally modified. Consequently, we also suggest specifying the range of data to be maintained by such registry. At least, the central register of caught stray animals should contain the same information as the records that have to be kept by quarantines and shelters.

2.4 Authorization to enter the dwelling

In our opinion, in terms of this change, it was and still is possible to open and enter the dwelling even during the current legislation, however, only in the presence of the police.

If we want to remove all the doubts, it is suitable to adjust better the authorization of veterinarians to enter the dwelling. The new legal framework deals only with the situations that, if the owner is in the dwelling and does not let the veterinarian enter the dwelling, he may be fined. However, this does not bring the desired effect which is animal welfare. It is necessary to adopt a legislation so that the veterinarian, even against the will of the owner, could enter the dwelling and adequately overcome the obstacle (locking, etc.).

In order to achieve the desired effect, it is necessary in the draft *de lege ferenda* to adjust and specify properly under what conditions this can be done, i.e. the presence of the non-party, how to proceed after the dwelling is opened, the obligation to inform the owner immediately as well as the obligation to inform the police forces.

2.5 Transfer of animal ownership by the municipality

The draft law takes into account the possibility of transferring an animal ownership from the municipality to a natural or legal person. However, this transfer is not specified in any way.

Within the *de lege ferenda*, we suggest that the transfer of ownership is precisely specified and modified by the draft law in order to avoid a different approach by different municipalities. For example, to avoid cases when the transfer of ownership is possible after 7 days in one municipality and after 2 years in another one and also after fulfilling the nonsense conditions.

In this regard, we point at legislation in the field of municipal property and exact rules even in the case of transferring the property of municipalities, which is the Act no. 138/1991 Coll. on municipal property, as amended. Also, the animal will be the municipal property, which the municipality will transfer to a natural person or legal person, and thus it is necessary to reflect the above mentioned legal regulation.

2.6 Acquisition of animal ownership

In order to achieve a further shift towards better legal status of animals in the Slovak Republic, the proposed legislation clearly specifies the transfer of ownership to the state in case of stalking animal that was captured, quarantined and kept in the shelter for longer than 3 months. It means that there was no change in this field, only the period of 1 year was shortened to 3 months.

Based on the practical experience, it is not appropriate for the ownership right of the captured animal to be shifted to the state, but we suggest that within the *de lege ferenda* proposal, animals are not owned by the state because the state does not exercise any powers in this field. We think that more appropriate is when the ownership is shifted to the village or to quarantine station or shelter. In this respect, it is also necessary to amend the provisions of the Civil Code. Our claims support also the fact that the similar legislation is contained in the Civil Code of the Czech Republic.

2.7 Definition of the animal

The draft law also brings a change in the Civil Code, i.e. the animal will no longer be considered a thing. However, in order to achieve the best legal status of animals, defining an animal as a living creature is not enough, since it is only a legal definition without further links. We believe that by defining the animal, it will be created a new subject of law to which it is necessary to attribute the rights and duties.

For this reason, we consider it appropriate to specify the legal status of animals and the transfer of ownership of animals, to add a responsibility for animal, liability for damage caused by animal, and liability for health damage, etc., so that the definition of the concept of an animal and the consequent non-acceptance of subjective rights for this newly created subject of law was effective.

2.8 Prohibition of keeping the animal on the chain

With regard to the amendment to the Veterinary Care Act, it is necessary to resolve the ban on keeping dogs on the chains, since the proposed law does not touch this issue at all.

The best and the most straightforward way to ban keeping dogs on the chain is to edit a direct ban on keeping dogs on a chain or other similar medium that prevents a free movement of dogs (under the chain we understand any binder such as a twine, rope, wire or other alternatives). In order to meet the requirements for free movement, physiological and ethological needs, the dog has to be allowed to move freely every day without being fastened. Also in order to develop their own givens and physiological expressions, the dogs shall not be chained except the time necessary for their feeding, cleaning, checking, medication procedures or any other serious cause and just for a limited time period.

3 Conclusion

The article focuses on the "major" amendment to the Act on Veterinary Care which emerges from the need to increase the protection of the legal status of animals in the Slovak Republic. The amendment to the Act on Veterinary Care was prepared by the Ministry of Agriculture and Rural Development of the Slovak Republic. Subsequently, after the own text of the amendment to the Act on Veterinary Care was prepared, the Ministry initiated an inter-ministerial commentary procedure.

The need to amend the Act on Veterinary Care is also evident from the interest of the professional public and the general public in increasing the protection of the legal status of animals in the Slovak Republic. The considerable interest was also reflected in the number of comments submitted on the amendment to the Veterinary Care Act in the inter-ministerial commentary procedure.

The draft law itself, however, in many ways brings confusion and the possibility of a varied interpretation, which in the end will cause application problems in practice. It will not increase the protection of the legal status of animals in the Slovak Republic, but, on the contrary, will increase the public's mistrust in the legal regulation in this field.

Literature:

1. Act No. 39/2007 Coll. Veterinary care Act as amended
2. Act No. 300/2005 Coll. Criminal Code Act as amended
3. Act No. 40/1964 Coll. Civil Code Act of Slovak republic as amended
4. Act No. 246/1992 Coll. Protection of animals against cruelty as amended
5. Act No. 89/2012 Coll. Civil Code Act of Czech Republic as amended
6. Decree of the Ministry of Agriculture and Rural Development of the Slovak Republic No. 143/2012 Coll. about keeping dangerous animals
7. Decree of the Ministry of Agriculture of the Slovak Republic No. 123/2008 Coll. on details of the protection of pets and requirements for quarantine stations and animal shelters.
8. Government ruling (of Slovak republic) No. 432/2012 Coll. which stipulate requirements for the protection of animals during slaughter

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