

THE REGULATION OF ANIMAL PROTECTION IN HUNGARY

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Abstract

In Hungary, the first Act on Animal Protection, which aimed at handling and respecting animals as living creatures capable of feelings and suffering and thus deserving and entitled to protection, was adopted in 1998. Based on this, the Act contains several regulations which ensure that animals are protected against all possible kinds of avoidable physical or mental harm. Furthermore, it prohibits and imposes sanctions for any treatment that causes animals unnecessary suffering. The present study undertakes to focus on such regulations with the intent of verifying that the current Hungarian regulation harmonizes with modern European trends; in fact, to a certain extent (e.g. by applying criminal sanctions for animal torturing), it even provides guidelines for those trends.

Key words

animal protection, 'animal law' in Hungary, ban on animal torture

The animals' welfare is not an ancient postulate; it is only the product of the modern era. After the World War II. the idea of 'humanity' spread out to such spheres that had been imaginable prior to that. In the philosophical thinking the idea that animals, or at least certain kinds of animals, are sentient beings that deserve protection from being harmed, both physically and psychically, appeared in the '70s in the Western countries. This view, however, had a long journey to go. For example, Descartes deemed that animals are, simply, machines, no different in principle from clocks. He denied that they have minds, and, consequently, thought they lack reason.¹ Kant did not recognise animals as moral agents either, viz., on the ground that they are not autonomous, that is, they are not ends-in-themselves, in contrast to humans, but he stated it is immoral to be cruel to them. He claimed that those people who hurt animals are more likely to be capable of hurting other humans, too.² The first real pioneer of the case for animals' weal was, however, Jeremy Bentham, the English utilitarian philosopher. He believed that particular animal entities are sensitive

¹ Taylor, Angus: *Animals & Ethics: An Overview of the Philosophical Debate*. Broadview Press, Peterborough, Canada, 2003, pp. 35-40.; Regan, Tom: *The Case for Animal Rights*. University of California Press, Berkeley and Los Angeles, California, USA, 2004, pp. 3-5.

² Taylor, *op. cit.* pp. 44-49.

beings³ at least to the same extent as certain humans. As he wrote: “The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. ... It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate?”⁴ Namely, “the question is not, Can they reason? nor, Can they talk? but, Can they suffer?”⁵ And the answer, that is being recognised at present, is that yes, they as living entities capable of feelings can suffer and feel pain.⁶ On the basis of this recognition did the regulations come into being across the Western countries in the 70’s, 80’s and 90’s which began to protect certain kinds of animals from unnecessary physical pain and mental suffering that humans can cause, either with intent or by recklessness, to them.

Nevertheless, these regulations do not ban people from killing animals, only prescribe that this killing is legally possible in certain instances and without causing animals needless suffering. For example, slaughter in abattoirs is not legally forbidden and this is also the case concerning animal experiments, albeit in the most modern philosophical debates there are standpoints which deem that using animals for, among others, drug experiments or eating them is morally unjustifiable and, consequently, ought to be prohibited by national laws.⁷ In Hungary, in accordance with the international trends, there

³ Bentham, Jeremy: An Introduction to the Principles of Morals and Legislation. In: The Works of Jeremy Bentham, Vol. I., Edinburgh, 1843, p. 142.

⁴ Bentham, *op. cit.* p. 143.

⁵ *Ib.*

⁶ The term “animal ‘suffering’”, according to Marian Step Dawkins, “[c]learly refers to some kinds of subjective experience which have two distinguishing characteristics. First, they are unpleasant. They are mental states we would rather not experience. Secondly, they carry connotations of being extreme.” (Dawkins, Marian Step: Scientific Basis for Assessing Suffering in Animals, p. 28. In: Singer, Peter /ed./: In Defense of Animals. The Second Wave. Blackwell Publishing, Malden, MA, USA – Oxford, UK – Carlton, Victoria, Australia, 2008, pp. 26-39.)

⁷ “[w]e demand an end to raising animals for food, an end to killing them for their fur. <<Not larger cages>>, we declare, <<empty cages>>.” (Regan, p. xiv.); “[a]ll research that harms animals should be abandoned, even if that means foregoing the benefits that would have accrued.” (Taylor, p. 143.); “What we must do is bring nonhuman animals within our sphere of moral concern and cease to treat their lives as expendable for whatever trivial purposes we may have.” (Singer, Peter: Animal Liberation. Pimlico, London, 1995, p. 20.)

are no rules on animal 'rights' like that; the Hungarian law merely limits the cruel treatment of animals.⁸

In Hungary, the first law on animal protection was enacted in 1998 (numbered and named as Act XXVIII of 1998 on Animal Protection and Tolerance) and it entered into force in 1999. The preamble of this law declares the principle that "animals are living entities capable of feeling, suffering and expressing happiness"; therefore, "respecting them and ensuring that they would generally feel good shall be everyone's moral obligation". (In this way, the doctrines formed by Bentham two centuries ago are now basically accepted.) The justification for this Act confirms that legislative motive that some animals (typically vertebrates) are living creatures capable of emotions and expressing happiness, satisfaction, and terror. The declared purpose of the Act is to advance the protection of entities in the animal world, which means that protection shall be granted not to human beings but rather to animals as individual living creatures. The former regulation on nature and environment, and even the nineteenth-century prohibition of animal torture in Act XL of 1879 (the so called "Code on Petty Offences" which supplemented the Hungarian Penal Code) focused on the protection of human beings' living conditions, calmness, and sense of morality instead of the emotions, pains, and needs of animals.⁹ Consequently, the Hungarian Act on Animal Protection and Tolerance is a significant advancement in the way of treating animals as individuals and self-values, and it considers the protection of these entities important for itself (and not for the reason for ensuring people's interests). In Hungary, this Act protects animals in many ways. It forbids, for example, animal torture, training animals for fighting, and force-feeding animals. It is against the law to force animals to perform activities substantially above their abilities or to subject them to unnatural and self-abusive activities.¹⁰ The justification for the Act also argues that animal-keepers shall have

⁸ For the results of the animal rights movement see *e.g.*: Cassuto, David – Lovvorn, Jonathan – Meyer, Katherine: Legal Standing for Animals and Advocates, *Animal Law*, Vol. 13 (2006-2007), pp. 61-86.; Favre, David: Integrating Animal Interests into Our Legal System, *Animal Law*, Vol. 10 (2004), pp. 87-98.; Chilakamarri, Varu: Taxpayer Standing: A Step toward Animal-Centric Litigation, *Animal Law*, Vol. 10 (2004), pp. 251-282.; Lovvorn, Jonathan R.: Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform, *Animal Law*, Vol. 12 (2005-2006), pp. 133-149.; Otto, Stephan K.: State Animal Protection Laws – The Next Generation, *Animal Law* Vol. 11 (2005), pp. 131-166.; Druce, Clare – Lymbery, Philip: Outlawed in Europe. In: Singer, Peter (ed.): *In Defense of Animals. The Second Wave*. Blackwell Publishing, Malden, MA, USA – Oxford, UK – Carlton, Victoria, Australia, 2008, pp. 123-131.

⁹ This is also proven by the fact that, according to this Code, animal torture or abuse ought to have been deemed as a petty offence not in itself, but only if it was committed in public and in a scandalous way.

¹⁰ Act XXVIII of 1998, 6. §.

certain obligations with regard to animals; they shall look after them, and this legal obligation is morally grounded and established.

It is interesting to note, that the Act provides an exception to the prohibition on force-feeding animals: it is still permissible to force-feed ducks and geese by domestic and traditional methods. One of the most important products exported by Hungary is fat goose-liver. 1800-1900 tons of fat goose-liver are produced by Hungary annually,¹¹ and approximately 75% of that amount will be exported.¹² The most significant demand market is France,¹³ so it is not accidental that French farmers regularly protest against the import of Hungarian fat goose-liver, and they demand protectionist measures by the French government. The other noteworthy exception of an agricultural nature applies to goose-feather stripping. It must be noted, however, that in connection with goose-feather stripping some hysteria has been generated in an artificial way. Nowadays, goose-feathers are not 'stripped' as in the past; feathers are not torn out of the live tissue of the animal, only the feathers whose end has become keratinized are pulled out from the goose. This method, if appropriately applied, should not cause any pain or suffering to the goose since the animal would shed such overmature feathers anyhow. By the way, rather rigorous regulations apply to feather stripping. It is forbidden, for example, to wet geese feather, choke the windpipe of the birds, or to carry out feather-plucking in a temperature below an average of 15 degrees Celsius. Should skin injury occur, then it should immediately be treated by veterinary medical products.

A further provision of the Act on Animal Protection regarding individual animal entities is to guarantee that animal-keepers are obliged to provide animals with living conditions suitable for their physiological needs, adequate and safe shelters, and enough space for their normal healthy movement. It is forbidden to oust, get rid of, or desert a (domesticated) animal. No surgical interventions are allowed for non-medical or non-sterilization reasons, but purely for altering animals' appearance.¹⁴

The Act generally stipulates that animals shall not be killed for reasons and under circumstances that are unacceptable or intolerable. The crucial and debatable point of this regulation is the question of what is to be considered 'an acceptable reason or circumstance'. Pursuant to the Act on Animal Protection the purpose of nutrition, fur

¹¹ Cf.: Toaso, Szilvia – Birkas, Endre – Vincze, Judit: The Present State and Prospects of Hungarian Goose Farms after EU Accession, p. 70. In: *Gazdálkodás: Scientific Journal on Agricultural Economics*, Vol. 49, Special Issue, No. 12, 2005, pp. 70-77.

¹² *Ib.*

¹³ *Op. cit.* p. 71.

¹⁴ Act XXVIII of 1998, 10. §.

production, animal stock control, incurable diseases, injuries, the danger of infections, pests clearing, the prevention of otherwise unavoidable attacks and, finally, scientific research are deemed to be such acceptable reasons and circumstances.¹⁵ This section of the Act was modified not long ago, namely in November, 2011 by the Hungarian Parliament,¹⁶ and it now regulates that only chinchillas and angora rabbits may be used for purposes of fur production. (The rationale for this regulation is that, besides these animals, others have practically never been bred for the sake of their fur for almost two decades now. It is interesting to note, by the way, that should anyone insist on breeding other animals for fur production, and should the authorities become aware of such an activity, if those animals could not be sheltered in a zoo, then they would have to be killed in order to preserve the present state of Hungary's fauna.¹⁷ This may be regarded as a rather strange provision in a law on animal protection.

As a further modification in the new regulation, the Act stipulates that in the case of breeding dogs and cats, the purpose of nutrition and fur production shall not be deemed as acceptable reasons. Moreover, irrespective of the aim of breeding, it is unacceptable that dogs or cats be used for nutrition or fur production.¹⁸ According to the justification for the amendment of the Act, the explicit enactment of such prohibitions are necessary because, due to globalization, more and more minorities live now in Hungary who from time to time are suspected or alleged to eat dogs or cats although none of these suspicions or allegations have ever been proven to date. Since this is alien to Hungarian customs, the amendment of the Act on Animal Protection has set forth these prohibitions with preventive intentions; however, Regulation 1523/2007/EC, which shall be directly applicable in all EU Member States including Hungary as well, also sets forth regulations of such kind, namely and precisely, ban on the trading of cats and dogs fur in the member states of the European Union.¹⁹

¹⁵ Act XXVIII of 1998, 11. §.

¹⁶ This amendment (named and numbered as Act CLVIII of 2011 on the Amendment of Act XXVIII of 1998 on Animal Protection and Tolerance) was promulgated in the Hungarian Official Journal on 29th November, 2011 and will enter into force on 1 January, 2012. In the following, as it is usual in the Hungarian law, I will refer not to the sections of this amendment act but the sections of the amended original Act XXVIII of 1998.

¹⁷ Act XXVIII of 1998, 19/A. §.

¹⁸ Act XXVIII of 1998, amended 11. §.

¹⁹ Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007, Article 3: „The placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur shall be prohibited.”

Finally, a further curiosity in the amendment is that in the future, after the entry into force thereof, dogs can be declared dangerous only in cases if the behaviour of the individual dog itself gives grounds for that, and complete races of dogs cannot be declared dangerous. The score of it was a decision by the Hungarian Constitutional Court²⁰ in which it held that the Government Decree No. 35/1997. (II. 26.) which declared the pitbull terriers dangerous is unconstitutional because pitbull terriers cannot be differentiated unequivocally from staffordshire terriers. Hence, the amendment of the Act on Animal Protection and Tolerance enacted a new provision in the Act which disposes that "dangerous dog is a dog that is declared dangerous by the animal protection authority".²¹

Returning to the original text of the Act on Animal Protection, the Act – in order to ensure humane treatment (sic!) (this term expressly appears in the Act's justification as it is) – also stipulates that animals are only allowed to be killed after they are drugged (except for some special cases, e.g. the cutting of rabbits or poultry).²² Animals therefore can be killed, but their unnecessary suffering must be prevented and this applies to both physical and mental suffering.

Based on this, if animals which are raised, for example, for their meat and dairy products are not slaughtered immediately, then they have to be fed and provided with a restful environment for the period awaiting their eventual slaughter.²³ (At the same time, it must be mentioned that not only compulsory but ritual slaughter of animals is allowed as well.)²⁴ Slaughter methods regarded to be 'humane' by the implementation degree of the Act may include use of pistols, trauma caused by fatal head concussion (i.e. striking animals dead), electrocution, carbon-dioxide gas, beheading, and twisting the neck of poultry and other birds, or in the case of some birds (like quails, partridges or pheasants) use of vacuum-chambers, and with respect to furred animals use of various gases, electrocution or pistols in addition to drugs with hypnotic effects.²⁵

Furthermore, during the transportation of animals, causing unnecessary suffering or pain must be avoided, adequate drinking water, food, and appropriate litter must be provided, injuries must be avoided, enough space for movement and protection against adverse

²⁰ Decision 49/2010. (IV. 22.) AB of the Constitutional Court of the Republic of Hungary.

²¹ Act XXVIII of 1998, 24/A. § (2).

²² Act XXVIII of 1998, 12. § (1).

²³ Act XXVIII of 1998, 15. §

²⁴ Act XXVIII of 1998, 19. § d).

²⁵ FVM Decree No. 9/1999. (I. 27.), Appendix 3, 6 and 7.

weather conditions should be provided, enough air should be supplied as well as a solid slip-proof flooring.²⁶ The same must apply to the circumstances and conditions of animal retention in the case of animals kept for experimental purposes. Consequently, animal experiments are allowed in Hungary, but only by obeying strict rules.

Animal experiments are forbidden, for example, for the purpose of producing and manufacturing cosmetics, tobacco, other luxury goods, guns or ammunition.²⁷ For all animal experiments, a license issued by the competent authority is required.²⁸ Animal experiments have to be carried out in a way that would cause animals the least possible pain and suffering, and should affect the least number of animal subjects.²⁹ If there is an alternative scientific method which would lead to the same result without carrying out animal experiments, then animal experiments are forbidden.³⁰ Finally, if an animal during the experiment suffers serious health impairment, then it should be killed in a humane way.³¹ (In fact, the implementation decree of the Act goes as far as regulating that smoking is forbidden in the premises where animals are kept, an optimal level of humidity must be provided, noises, unexpected sounds and vibrations must be eliminated, and light and dark periods must be alternated etc.)³²

The amendment adopted in November, 2011 also prohibits using live animals as raffle prizes.³³ The reason for that is that the winners of such animals are usually unprepared to keep them in proper conditions; therefore, the animals' welfare is threatened in many cases of them. Another interesting thing related to this is that the Hungarian regulation ensures the so-called 'animal-euthanasia', i.e. mercy killing of animals in order to avoid or prevent the unnecessary prolongation of their suffering. Should the survivorship of animals be accompanied by suffering that cannot be terminated or alleviated, and the recovery of such animals cannot be expected, then their owners or, in absence

²⁶ Act XXVIII of 1998, 36-38. §§; Joint KHVM-FVM Decree No. 13/1999. (IV. 28.) on Transportation of Animals.

²⁷ Act XXVIII of 1998, 25. § (6).

²⁸ Act XXVIII of 1998, 25. § (2)-(5).

²⁹ Act XXVIII of 1998, 27. §.

³⁰ Act XXVIII of 1998, 26. §.

³¹ Act XXVIII of 1998, 29. § (2).

³² Government Decree 243/1998. (XII. 31.) on Animal Experiments, Appendix 1.

³³ Act XXVIII of 1998, 8/A. §.

of their owners or when the owner is unknown, the animal health control authority (the Central Agricultural Office /CAO/) is obliged to take measures for killing the animals in a way that would not cause them pain.³⁴ If these regulations are violated, the CAO is entitled to impose an animal protection fine³⁵ ranging from 5,000 HUF to 150,000 HUF (about from 16 up to 500 EUR).³⁶ Along with or instead of such fine, the CAO may prohibit offenders from keeping animals (or from keeping certain animals) for a period of 2-8 years, or it may require them to participate in special programs on animal protection, with the purpose of ensuring that all the above mentioned regulations are obeyed.^{37 38}

In the most severe cases, however, when animals are killed or tortured without any reason, even criminal sanctions can be imposed following 2004³⁹ (see: Hungarian Act on the Criminal Code Section 266/B. on "Cruelty to Animals").⁴⁰ Nevertheless, Hungarian courts have not

³⁴ Act XXVIII of 1998, 45. § (1).

³⁵ Act XXVIII of 1998, 43. §.

³⁶ Government Decree No. 24/1998. (XII. 31.) on Animal Protection Fine, 2. §.

³⁷ Act XXVIII of 1998, amended 43. § (6)-(12).

³⁸ It is worth mentioning here that the institution of the Hungarian *ombudsman for environmental cases* (officially, *the Parliamentary Commissioner for Future Generations*; colloquially, the 'green ombudsman') will be abolished on January 1, 2012. On this date the new Constitution of Hungary will enter into force that new provisions introduces into the Hungarian law. For example, among others, the ombudsman system will be rearranged, viz., in lieu of the four up to now autonomous ombudsmen only one will remain. The ombudsman for data protection and freedom of information will be totally ceased, and the up to now ombudsman (parliamentary commissioner) for the national and ethnic minorities rights, the ombudsman for future generations and, finally, the ombudsman for civil rights will be fuse into one, 'general' ombudsman. This future general parliamentary commissioner will have two 'deputy ombudsman', amongst them the up to now 'green ombudsman', however, without own authority.

³⁹ Act X of 2004.

⁴⁰ Subsection (1) "Any person:

a) who is engaged in the unjustified abuse or mistreatment of vertebrate animals resulting in permanent damage to the animal's health or in the animal's destruction;

b) who abandons, dispossess or expels a domesticated mammal or a dangerous animal raised in a human environment;

is guilty of a misdemeanor punishable by imprisonment for up to two years, community service, or a fine."

sentenced any animal torturer to imprisonment so far although suspended prison sentences have already been imposed in several cases.

Conclusion. It is obvious, that Hungarian animal protection has caught up with the practice of modern European countries, and even if it is problematic whether animals are entitled to subjective rights to avoid physical and mental torture,⁴¹ or if these provisions simply embody people's obligations against other people in order to protect their sense of morality, there is no doubt that the Hungarian regulation regards the individual animal lives as extraordinary value, and that the provisions in the Act on Animal Protection grant all possible guarantees required in our days.

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Subsection (2) "Any person who is engaged in hunting or fishing using implements and methods forbidden by the Act on Hunting and in the Act on Fishing, respectively, shall be punishable in accordance with Subsection (1)."

Subsection (3) "The punishment shall be imprisonment for a felony for up to three years if the criminal conduct specified in Subsections (1)–(2) is carried out in a manner to cause undue suffering to the animal."

⁴¹ This seems to be proven by the fact that Act X of 2004, which made 'cruelty to animals' part of the Hungarian Act on the Criminal Code, acknowledges individual animals as subjects of legal protection and thus as obligees of the crime. Pursuant to the justification of this act, the legal object defended by the crime (apart from the maintenance of public order) shall be "the protection of the life and health of the animal as a creature capable of emotions". (See: Kis, Norbert /ed./: The Commentary of the Penal Code. Volume III.: Criminal Law Special (2), p. 988. MHK, Budapest, 2007.)

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