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HARMING THE HEALTH AND LIFE OF ANIMALS IN THE HUNGARIAN LEGAL SYSTEM

According to the definition in the Hungarian Animal Protection Act, animal cruelty is the unnecessary infliction of pain on an animal, or any intervention, treatment or restriction of its needs to such an extent that it causes lasting fear or damage to its health, as well as the breeding or reproduction of animals suffering from hereditary diseases, unless for experimental purposes. The right of animals to health thus appears as a protected value in administrative law. Similarly, the protection of the health of animals as sentient beings appears indirectly in criminal law. However, concepts that are already taken for granted in constitutional law and international documents in relation to humans take on a completely different meaning in relation to animals. This study examines the development of animal protection and how administrative and criminal law protection has changed. In this context, it is worth examining how the protected legal object has shifted from public order and public peace to animals as sentient beings. One of the driving forces behind the change in regulation is the change in public morals, which is therefore also worth mentioning.

Animals' right to health does not enjoy the same strong constitutional protection as humans' right to health. However, this does not preclude administrative and criminal law from protecting animals as sentient beings against unnecessary harm to their health. When developing and interpreting regulations, however, it must not be overlooked that the treatment of animals does not entitle them to anything, and that the protection of animals, which includes the protection of their health, must be examined on a case-by-case basis.

Keywords*: the right to health, animals, animals' right to health*.

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Introduction

When we talk about violations of health or bodily integrity, human rights usually come to mind. (Kambovski, 2024: 24.) However, we must not forget that the protection of animal health is also protected by numerous laws, including criminal law. According to the definition in the Hungarian Animal Protection Act, *animal cruelty is* the unnecessary infliction of pain or suffering on an animal, or any intervention or treatment that results in such an effect, as well as the restriction of an animal's needs to such an extent that it causes lasting fear or damage to its health, and the breeding or reproduction of animals suffering from hereditary diseases that are not intended for experimental purposes. The right of animals to health thus appears as a protected value in administrative law. Similarly, the protection of the health of animals as sentient beings appears indirectly in criminal law. However, concepts that are already taken for granted in constitutional law and international documents in relation to humans take on a completely different meaning in relation to animals. This study examines the development of animal protection and how administrative and criminal law protection has changed. In this context, it is worth examining how the protected legal object has shifted from public order and public peace to animals as sentient beings. One of the driving forces behind the change in regulation is the change in public morals, which is therefore also worth mentioning.

1. Morality and law

Morality and law are closely related. The functioning of society and people's lives are framed by several systems of norms. Within these systems of norms, morality and law play an important regulatory role alongside religion. However, Péter Miskolczi Bodnár's well-known study emphasizes that morality and law do not completely overlap. There is a common core to legal norms and ethical norms. However, legal norms are at a higher level of generalization and have a broader scope. Péter Miskolczi Bodnár thus sees the truly significant difference not in the content of the norms or their scope, but in the enforceability of the norms and the means of ensuring compliance with them. (Miskoczi, 2015: 1.) According to his theoretical derivation, the moral and legal systems of norms are closely linked, since the law, on the one hand, expects behavior that is also required by moral values and, on the other hand, prohibits behavior that we do not consider ethical. The content of the two systems of norms therefore shows the same tendency. (Miskolczi, 2015: 1.)

When the legal system classifies a morally reprehensible act as punishable, it expresses that moral and ethical sanctions are insufficient to ensure that the behavior in

question is prohibited. In this context, Írk writes that the legal system is closely linked to morality, as it serves the good of society, and therefore legal provisions (including criminal law provisions) are the moral duty of all citizens. (Irk, 1990: 1.) We may say, that different legal and ethical frameworks may influence interpretations, and it leads to divergent views on its content and application. (Stevanovic, 2024: 122.) In general, the discussion surrounding the right to bodily integrity has become a prominent and contentious issues within moral, political and legal spheres. (Boskovic, 2024: 135.)

What we consider important in relation to animal cruelty is the recognition that public morals change and are therefore in constant interaction with the legal system, including criminal law. As social morals change, they will also influence the legal system over time.

The parallel may seem a little distant, but let us recall the story of one of Tolstoy's main characters. *"Maslova's story was quite an everyday one. She was born to a servant girl who worked as a milkmaid on the estate of two old landowning sisters. This unmarried woman gave birth every year, and as was customary in the village, the child was baptized, but then the mother did not feed the newborn – since she did not want it, did not need it, and it only hindered her work – and the child soon starved to death. Five of her children had already died this way. All of them were baptized, then not fed, and died. The sixth, a girl born to a wandering gypsy, was destined for the same fate. But it so happened that one of the old maids happened to go out to the stable to scold the milkmaid for the cream smelling of cows, and there in the stable lay the young mother with her beautiful, healthy baby. The old maid scolded the woman for the cream and for letting the mother into the stable, and was about to leave when she saw the newborn baby. She was moved and offered to be her godmother. She did indeed baptize the girl, and then took pity on her, giving milk and money to the young mother, and the child survived.* (Tolstoy: Resurrection)

Infanticide, as described by Tolstoy, is the deliberate killing of a child born out of wedlock by its mother during or immediately after birth. As a sui generis delictum, it has undergone a long and varied evolution from an act involving at most moral contempt to the most serious cases of intentional homicide, also known as "parricide," "(infanticide)" right up to the present day. (Bokor, 1911: Infanticide) Thus, it was a privileged case of homicide and became a qualified case under the latest Criminal Code.

Unfortunately, even in the not too distant past, it was considered natural in some places to bury or drown puppies so that the owner could keep the ones they wanted. A similar change in public morals can be seen in relation to keeping dogs on a permanent chain. Pursuant to the amendment to the government decree on the keeping and sale of pets ( ), which came into force on January 1, 2016, it is now prohibited to keep dogs

permanently chained up.[1] Unfortunately, we cannot say that public opinion has followed the positive change in the law everywhere.

As a result of the amendment to the decree, the written and electronic media widely covered the topic in reports, news portals, and social media, thus also influencing public awareness. The reason for the government decree was that even today, many people still keep dogs as simple "signaling devices," locked in kennels or "exiled" to backyards. Their only expectation of dogs is that they scare away burglars or foxes.

The official state information sheet on the decree also emphasizes that dogs are the only animal species that prefer the company of humans over their own kind, and that they need this because they have become "social beings" through thousands of years of coexistence with humans. When examining dog attacks on humans, we can see that the majority of cases resulting in serious injury or even death are caused by poorly socialized dogs, i.e., dogs that have been deprived of the opportunity to form proper relationships with humans. Of course, it would be very difficult to define within a legal framework exactly how many minutes of walking, playing together, and guided activities are necessary for each individual, breed, and type of keeping in order for our most loyal companions to live as well-socialized, happy, and balanced creatures. The provisions of the regulation therefore set out a kind of guideline to be followed, helping to establish responsible animal husbandry practices and at the same time defining a minimum standard of moral treatment of animals.[2]

Moral considerations always arise when certain acts are declared punishable, which the Constitutional Court consistently applies in its proceedings relating to the review of norms.

The Constitutional Court has already pointed out in its decision 21/1996. (V. 17.) AB that the determination of criminal offenses is a matter for the legislature and thus the domain of the democratic majority. In exceptional cases, however, constitutional review may also apply here.[3] In its decision 30/1992. (V. 26.), the Constitutional Court also outlined the criteria for constitutional review. It pointed out that "It is a substantive requirement of constitutional criminal law that the legislature may not act arbitrarily when defining the scope of punishable conduct. The necessity of declaring a particular conduct punishable must be assessed according to strict criteria: the system of criminal law, which necessarily restricts human rights and freedoms in order to protect different living conditions, moral and legal norms, may only be used when absolutely necessary and to the

[1] Government Decree 41/2010 (II. 26) on the keeping and distribution of pets, Section 14(12)

[2] https://portal.nebih.gov.hu/-/tajekoztato-a-kutyak-tartos-lancon-tartasanak-tilalmarol (28 July 2025)

[3] ABH 1996, 74, 82. Constitutional Court Decision

extent justified, if the protection of constitutional or state, social and economic objectives and values cannot be achieved by other means.[4] In the same decision, the Constitutional Court also stated that when assessing the constitutionality of criminal legislation, it must be examined whether the specific provision of the Criminal Code "provides a proportionate and appropriate response to a phenomenon deemed dangerous and undesirable, i.e. whether, in the event of a restriction of constitutional fundamental rights, it is limited to the narrowest possible scope necessary to achieve the objective, in accordance with the relevant requirements. According to the requirements of constitutional criminal law, the provision describing the conduct prohibited by the threat of criminal sanctions must be precise, clearly defined and clearly worded. It is a constitutional requirement that the legislative intent regarding the protected legal interest and the criminal conduct be clearly expressed. It must contain a clear message as to when an individual commits a criminal offense. At the same time, it must limit the possibility of arbitrary interpretation of the law by those applying it.[5] Similarly, the protection of moral norms was given a prominent role in Decision 38/2012. (XI. 14.) Constitutional Court Decision, which provided for the annulment of administrative offenses sanctioning the use of public spaces for habitual residence and other legal provisions.

It should be noted that the Constitutional Court also considers similar aspects when examining the constitutionality of misdemeanors, bearing in mind that the Szabs.tv. fundamentally changed the function and place of misdemeanors in the legal system. The Szabs.tv. now regulates administrative offenses exclusively as a means of combating "criminal acts."[6] The preamble to the Act defines the purpose of the legislation as ensuring "effective action against criminal acts that violate or threaten the generally accepted rules of social coexistence but do not pose the risks and dangers necessary for them to be punished as criminal offences," while the Szabs.tv. applies solutions from criminal law and criminal procedure law in both its doctrine of liability and its procedural rules.

Under the Szabs.tv., misdemeanors have essentially become the third, mildest level of the trichotomous criminal law system. They play a similar role in the legal system to the institution of misdemeanors introduced by Act XL of 1879 entitled "The Hungarian Criminal Code on Misdemeanors" and abolished by Decree No. 17 of 1955 on the abolition of the institution of misdemeanors and misdemeanor jurisdiction.

All this must be borne in mind when considering possibilities for further developing the criminal law (and thus the misdemeanor) system relating to animal husbandry.

[4] ABH 1992, 167, 176. Constitutional Court Decision

[5] ABH 1992, 167, 176. Constitutional Court Decision

[6] 38/2012. (XI. 14.) Constitutional Court Decision

Any change in any element of the moral, administrative (see animal protection law), misdemeanor, and criminal liability systems will inevitably affect the rest of the system. Consequently, changes in moral attitudes will also have an impact on other elements of the sanction system, but in such cases it cannot be ignored that the introduction of new sanctions for certain previously non-punishable acts can only be done with restraint and gradually. This is particularly true for the definition of protected legal interests, for which the recent changes in the criminalization of animal cruelty provide good examples.

The Constitutional Court's decision also stated that the punishment of behaviors that violate the rights of others and threaten public order when using public spaces is necessary.[7] The misdemeanor law establishes a number of separate offences (e.g. begging, disturbing the peace, public nuisance, prohibition of alcohol consumption, illegal gambling, endangering others with dogs, violation of public morals, disorderly conduct, etc.), on the basis of which homeless persons who use public spaces in a manner that threatens public order are also punishable. The fact that the use of public spaces for habitual residence entails the possibility of infringing the rights of others and violating public order cannot be considered a legitimate reason for criminalization. In its decision 176/2011. (XII. 29.), the Constitutional Court pointed out that abstract constitutional values relating to public order and public peace cannot in themselves justify the creation of such preventive offences. "Otherwise, the vast majority of activities taking place in public spaces would become punishable, as they often have a disruptive effect on the cityscape and the well-being of residents and are usually accompanied by noise." [8]

Based on this, it's not clear to those affected what kind of behavior is illegal, which leaves room for law enforcement to interpret the law however they want. Pursuant to Section 186(2) of the Szabs.tv., it cannot be determined when homeless people living in public spaces are exempt from liability for administrative offenses.[9]

This is particularly significant when we consider that the offense of "animal cruelty" introduced during the previous Criminal Code was codified as a crime against public peace and order.[10]

The explanatory memorandum to Act X of 2004 on animal cruelty ( ) also introduced the then new criminal offence on the basis of moral values, but with a degree of restraint. The introduction to the explanatory memorandum emphasizes that "in civilized, cultured societies, it is now a general moral requirement to behave in a humane manner

[7] 38/2012. (XI. 14.) Constitutional Court Decision

[8] ABH 2011, 615, 630. Constitutional Court Decision

[9] 38/2012. (XI. 14.) Constitutional Court Decision

[10] Act IV of 1978, Chapter XVI, Crimes against public order, Section 266/B.

towards fellow living beings, taking into account their feelings, satisfying their natural needs and alleviating their suffering. It is the moral duty of every human being to protect and spare animals, to respect them and to ensure their well-being."[11] The legislator aptly justifies the change in moral values with the phrase "today". In this context, it refers to European social morality and, consequently, to the assessment and evaluation of our country.[12] All this essentially suggests that European social morality now requires the protection of animals under criminal law, and that, to this end, the relevant domestic moral standards need to be raised. This is clearly stated in the explanatory memorandum, which states that "the reason for submitting this bill is that the legislator has a duty to enact the necessary legislation in order to increase human responsibility and raise social morality to a higher level."

Prior to the codification of criminal law, animal cruelty was regulated by Section 2 of Government Decree 218/1999. (XII. 28.) on certain misdemeanors. According to this, an offense was committed by anyone who, in a public place or in a manner likely to cause outrage to others, mistreated a vertebrate animal, intentionally caused it physical pain, or forced it to perform an act contrary to its nature, or unnecessarily performs an intervention on a vertebrate animal that is likely to cause outrage or alarm in others, or fails to ensure the minimum conditions for keeping vertebrate animals, causing physical pain, damage to health or illness to the animal through the methods of keeping it.

It should be noted that Act XL of 1879, the Criminal Code, also defines animal cruelty in its chapter on acts against public order, in Section 86, which could be committed in particular by anyone who tortured or severely abused an animal in public in a scandalous manner, as well as anyone who violated a decree or regulation issued against animal cruelty. It is clear that prior to the codification of criminal law, the primary legal object was public peace and order, so as not to cause outrage in others. In contrast, the protected legal object of the offense as defined by the 2004 law is the protection of the life and health of animals as sentient beings, yet this offense is still classified as an offense against public order in the Criminal Code, which is organized on the basis of the same protected legal objects. The reason for this is "the specific nature of crimes against public order, in that these crimes do not generally violate or endanger the rights of specific individuals, but have a wider impact, affecting society as a whole."[13]

[11] Justification of the proposers of Act X of 2004

[12] Justification of Act X of 2004

[13] See ibid.

2. Brief overview of the current legislation

The regulation of animal cruelty currently rests on several pillars. In administrative law, the provisions of the Animal Protection Act are decisive.[14] The unity of the right to life and dignity distinguishes humans from other persons on the one hand and from other living beings on the other.

The right to (mere) life was absolute in certain theories of natural law (e.g. Hobbes), insofar as the power to dispose of it could not be transferred to the state. As long as the death penalty (or war) was not called into question in the course of civilization, and as long as the rights of other living beings to life did not arise, the question of what makes the right to life a specifically human right did not become relevant. Human dignity and its connection to life ( ) distinguish the human right to life from all other rights. Without dignity, the right to life is not the right to human life. In the aforementioned natural law conception, the remnant of the natural state, the primacy of survival, is a right that, as Spinoza wrote, "even animals have." Today, however, it is its connection to the right to dignity that makes the right to life specific in the text on "the rights of animals and trees." A distinction must be made between the state's obligation to protect life (all life) and its obligation to protect dignity, which is a subjective right of human beings to life and dignity. "The rights of animals and trees" are not mere metaphors: the state does indeed have obligations to preserve the natural foundations of all life and to protect all life, from moss to embryos to humans, but this protection is relative, except in the strict sense of individual human life, and only humans have a subjective right to it. [15]

Since the Animal Protection Act came into force on January 1, 1999, the legislature has provided for the imposition of animal protection fines and other administrative penalties within the framework of administrative proceedings in certain cases of unlawful acts affecting the protection and welfare of animals. According to the Animal Protection Act, an animal protection fine must be paid by anyone who, through their actions or omissions, violates or fails to comply with the provisions of legislation or official decisions relating to the protection and welfare of animals.[16]

According to the definition in the Animal Protection Act, *animal cruelty is*: the unnecessary infliction of pain on an animal, or any intervention, treatment, or restriction of an animal's natural behavior or needs to the extent that it causes lasting fear or damage to health, or the infliction of pain on an animal for the purpose of causing suffering, or

[14] Act XXVIII of 1998 on the protection and welfare of animals

[15] 23/1990 (X. 31) Constitutional Court decision on the unconstitutionality of the death penalty, parallel justification by Constitutional Court Judge Dr. László Sólyom

[16] Animal Protection Act, Section 43

the infliction of pain on an animal for the purpose of achieving a non-experimental objective. treatment, or restriction of its needs to such an extent that it causes lasting fear or damage to its health, as well as the breeding or reproduction of animals suffering from hereditary diseases that are not intended for experimental purposes. The right of animals to health thus appears as a protected value in administrative law.

The importance of animal health also appears in other concepts. An animal shelter is an institution that, in return for payment, undertakes to keep an animal for a specified period of time, assuming responsibility for its care with the diligence of a good owner, for its health, and for the safety of the animals and the people in their environment.[17] It is clear that animal health and the right to health are already protected values in the regulations.

The basic obligation of the animal keeper is to act with the care of a good owner, which also includes protecting the health of their animals: 'Good farming practice' is human activity aimed at providing animals with living conditions that are appropriate to their species, breed, sex, age, physical, physiological, breeding and ethological characteristics and state of health, and that meet their needs in terms of housing, feeding, feeding, medical treatment, cleanliness, rest, care, training, education, supervision).[18] Animals kept outdoors must be provided with an area or facility where they can find protection in case of danger, as well as from the harmful effects of weather and health hazards.[19] It is prohibited to cause unnecessary or avoidable pain, suffering or injury to animals, or to harm animals, in particular by torturing animals, setting them on humans or other animals, training them for animal fighting, or force-feeding them, except in cases of forced feeding for health reasons.[20]

The Animal Protection Act punishes animal cruelty with administrative sanctions, primarily fines, but there is also a legal basis for disqualification from animal husbandry and confiscation.

3. Infringement law

The law on violations contains provisions applicable to animals and dogs, but the protected legal object is typically not the animal as a sentient being. Nature conservation offences punish significant disturbance of the life activities of protected or highly

[17] Animal Protection Act, Section 3(5)
[18] Animal Protection Act, Section 3(8)
[19] Animal Protection Act, Section 4
[20] Animal Protection Act, Section 6

protected animal species.[21] This protection does not apply to domestic animals, such as feral dogs, cats or farm animals.

Animal protection is indirectly reflected in the facts of drug law violations, when the perpetrator offers, transfers, acquires or possesses an unjustified quantity of false, falsified or veterinary products not authorized in Hungary.[22]

The protection of animals is also indirectly covered by the offense of violating the rules for crossing railroad tracks and by the offense of railroad violations, since despite the obvious danger to the life and safety of animals, the primary protected legal interest is the safety of railroad traffic. In the case of railway offenses, the offense is typically committed by omission, by leaving an animal unattended or free.[23]

It is clear that in the law on misdemeanors, the protection of animal health appears at most indirectly, together with other protected interests.

4. Criminal law protection

The Criminal Code defines the elements of the crime of animal cruelty as follows[24]:

Animal cruelty Section 244 (1) Anyone who

a) unjustifiably assaults a vertebrate animal or unjustifiably treats a vertebrate animal in a manner likely to cause permanent injury or death,

b) drives away, abandons or exposes a vertebrate animal or dangerous animal, shall be punished by imprisonment for up to two years for a misdemeanor.

(2) The punishment for a felony is imprisonment for up to three years if the animal cruelty

a) causes particular suffering to the animal,

b) causing permanent injury or death to several animals,

c) in public,

d) against an animal subject to a prohibition on keeping animals as pets or on keeping the species of animal concerned, as specified in the law on the protection and welfare of animals, during the period of the prohibition, or

e) within two years of a conviction for animal cruelty or the organisation of prohibited animal fights.

[21] Section 187(1) of Act II of 2012 on Misdemeanors

[22] Section 199/A(1) of Act II of 2012 on Misdemeanors

[23] Section 222 and Section 225/A(1)(f) of Act II of 2012 on Misdemeanors

[24] Hungarian Criminal Code (Act I of 2012) Section 244

(3) The punishment shall be imprisonment for a term of one to five years if the animal cruelty

a) is committed by using poison or placing bait capable of killing animals, causing the death of several animals, or

b) is committed as a repeat offense.

(4) A person shall be punished under paragraph (3) if he or she commits the offense specified in paragraph (1) (a) for the purpose of financial gain in connection with breeding, involving more than ten pets, with a failure to exercise the care of a good owner.

(5) Anyone who prepares to commit the crime specified in paragraph (3) a) shall be punished by imprisonment of up to two years for a misdemeanor.

(6) For the purposes of paragraph (3)(b), crimes of a similar nature in terms of particular recidivism shall be considered to be damage to nature causing the death of an animal, cruelty to animals, and the organization of illegal animal fights.

It is not our intention to provide a comprehensive commentary on the facts of the case. The basis of criminal law is that the protection and mercy shown to animals, which are at the mercy of humans ( ), is an integral part of human culture. In civilized, cultured societies, it is now a general moral requirement to treat fellow living beings with understanding, to take their natural needs into account, and to behave humanely in order to alleviate their suffering. It is the moral duty of every human being to protect and spare animals, to respect them and to ensure their well-being. In line with this, the introduction to the Animal Protection Act emphasizes that animals are living beings capable of feeling, suffering, and enjoying life, and that it is the moral duty of every human being to respect them and ensure their well-being.[25]

The task of criminal law is to protect and defend fundamental values. However, it should be noted that criminal law is the last resort among the means of state control. Animal cruelty is a criminal offense that protects the social interest in the preservation of nature, including the protection and welfare of animals. (Polt, 2013: 35.)

The general provisions and prohibitions of the Animal Protection Act represent the minimum standards of humane treatment and human responsibility, the violation of which may result in animal protection fines.[26] In contrast, criminal law protection is significantly narrower in scope; it only applies to the most serious cases of conduct prohibited by the Animal Protection Act.

[25] Preamble to Act XXVIII of 1998 on the protection and welfare of animals (Animal Protection Act)

[26] Animal Protection Act Sections 6-12, Section 43, Section 45(1)

From the point of view of the elements of animal cruelty, the Animal Protection Act is therefore the background legislation, but the prohibited conduct is defined in the Criminal Code.[27]

The first element of the offense is the commission of unjustified abuse or unjustified treatment that is likely to cause permanent damage to the health or death of a vertebrate animal. The offense is defined as abuse, rather than causing physical pain, because the law seeks to link criminal sanctions not to the sensation or result experienced by the animal, but to the conduct of the perpetrator. Abuse involves physical or psychological influence on the object of the offense. In practice, such acts usually affect the physical integrity of the animal. Obviously, not all types of physical or psychological abuse can be considered animal cruelty; for example, physical influence for the purpose of training or discipline may be necessary. However, even in this case, a distinction must be made between punishable and non-punishable means. Public opinion plays an important role in this regard.

Treatment is a broader category than abuse, as it includes any physical action or omission that does not fall within the scope of abuse. (Polt, 2013: 35.) This criminal behavior also assesses the nature of the process of animal abuse and suffering. In determining whether the abuse was "unjustified," the judge must take into account all the circumstances of the case, taking into account the general moral standards of society. The Animal Protection Act provides guidance on the interpretation of criminal conduct and the permanent damage to the animal's health.[28]

For criminal liability, it is not necessary for the perpetrator to actually kill the animal or for the animal to suffer permanent damage to its health; it is sufficient that the perpetrator's act is capable of doing so.

The killing of an animal may only take place after it has been stunned. The stunning requirement does not apply to invertebrates, poultry and rabbits slaughtered for domestic consumption, or in cases where the killing of the animal is justified by an emergency. In these cases, however, care must be taken to ensure that the animal is killed with professional speed and with the least possible suffering. Separate legislation provides for the killing of animals in a manner where prior stunning is not mandatory if the procedure causes immediate complete loss of consciousness and insensibility or death. The animal welfare authority is obliged to ensure that the animal is killed painlessly if its continued life would involve unavoidable or unalleviable suffering, if the animal is not expected to recover, if the owner of the animal is unknown, or, in the case of a wild animal, if the

[27] EBH 2008.1762 Hungarian Supreme Court Decision

[28] Animal Protection Act, Section 6(1), Section 3(2)

animal is unfit for life in the wild. The proven costs incurred in connection with the killing of the animal shall be reimbursed by the keeper of the animal or, in the case of a huntable species, by the person authorized to hunt it, even if the animal is a protected species.

The court did not find animal cruelty in conjunction with theft on the part of the perpetrator who, while attempting to take a total of sixteen hens and ducks and placing them in bags, tore off the birds' heads, causing their death. The destruction of the vertebrate domestic birds did indeed take place, but the circumstances of the offense, the motive for killing the animals, and the manner in which they were killed cannot be ignored. The perpetrator killed the birds in order to ensure the successful completion of the theft. The defendant killed the animals in a manner typical of backyard farms, namely by cutting their throats, removing their heads, and bleeding them. It should also be noted that if the defendant had succeeded in his act, the poultry would have been killed. The defendant did not engage in any activity that would have caused unnecessary suffering to the animals, therefore, in addition to attempted theft, the court did not find animal cruelty.[29]

A drastic method of killing, where the perpetrator recognizes that his conduct exposes a vertebrate animal to unnecessary and avoidable pain, and either intends this or accepts it, may constitute a criminal offense.[30] Further criminal conduct includes driving away, abandoning or exposing vertebrate animals or dangerous animals. The reason for punishing this conduct is not only the vulnerable situation of the animal, but also the prevention of dangerous situations that may be caused by the abandoned animal, which is why the law does not limit the scope of dangerous animals to dangerous vertebrates, but also includes scorpions and various species of spiders. This act can only be committed by the animal keeper.[31]

Acts committed with extreme brutality that cause suffering significantly exceeding the average suffering of the animal, as well as the act itself, justify the more severe assessment and punishment of cases causing special suffering due to their increased danger to society. Special suffering can be established if the animal cruelty causes significantly greater suffering than the average ( ), involves extreme brutality, and if the abuse is prolonged and the animal's suffering is visibly extreme. It is also a qualifying circumstance if the animal cruelty causes permanent damage to the health or death of several animals. The qualifying circumstance is the result of the act, so the perpetrator's negligence with regard to the result is sufficient to establish it. (Elek, 2016: 157.)

[29] Debrecen Regional Court 18.Bf.292/2013/4, Debrecen Court of Appeal Bhar.II.637/2013/6

[30] EBH2006.1391, Hungarian Supreme Court Decision

[31] Annex 1 of Joint Decree 8/1999 (VII.13.) KÖM-FVM-NKÖM-DM on dangerous animals and detailed rules for their keeping lists dangerous animals.

If the object of animal cruelty is an animal of value that is not owned by the perpetrator, the question of aggravated damage also arises. Aggravated damage is generally not considered to be a compound offense with crimes that include damage. However, animal cruelty does not involve damage to property, so if the perpetrator reduces the value of the animal by causing permanent damage to its health or kills the animal and causes financial loss to the owner, the two crimes can be considered to be in conjunction with each other. (Károlyi, 2006: 3.)

In relation to damage to nature, the acts committed are also different, but here damage and destruction may be elements of the offense. The death of an animal is an element of the offense in the case of damage to nature, but not in the case of animal cruelty.

In the case of organizing prohibited animal fights, the distinction from animal cruelty may be that the perpetrator does not harm the animal himself, but creates the conditions for another animal to "harm" it.

Animal protection and wildlife conservation provisions are also contained in the Hunting Act. Torture of wild animals is prohibited. The killing or capture of wild animals must not involve torture. Hunters are obliged to search for wild animals they have wounded or which are otherwise seriously ill with the intention of killing them. In order to spare the animal, it must be killed with a quick and immediate shot. Wounded game must be searched for as long as there is a chance of finding it. In the case of a shot fired at large game, the search must be continued even if there are no signs of injury at the scene. All of the above constitutes an active obligation on the part of the hunter, as opposed to a passive omission. In this case, a hunter is any person who is registered as participating in the hunt.

In the case of live capture, the authorized person is required to check on the person who captured the animal at least every twenty-four hours. In the case of nighttime operations, the first check must be carried out at sunrise at the latest. The game must be removed from the trap as soon as possible after detection. In the event of capture resulting in the immobilization of the game, veterinary care must be provided immediately.[32] Unfortunately, it is typical for poachers to only wound the game, but due to the risk of being caught, they do not even attempt to find it to put it out of its misery. This behavior is not only unethical, but may also constitute a criminal offense depending on the circumstances.

[32] Act on the Protection of Wildlife, Wildlife Management and Hunting, LV of 1996. Section 29, Vtvr. Section 22

Concluding thoughts

Animals' right to health does not enjoy the same strong constitutional protection as humans' right to health. However, this does not preclude administrative law and criminal law from protecting animals as sentient beings against unnecessary harm to their health. Criminal law protection also protects the intention, so animal cruelty can occur even without actual harm to health ( ). The law also allows for the harm of an animal's health and, in some cases, the taking of its life.

However, when developing and interpreting regulations, it must not be overlooked that the treatment of animals does not entitle anyone to anything, and the protection of animals, which includes the protection of their health, must be examined on a case-by-case basis.

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