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Do Animals Have Any Rights in Slovakia?

Czy zwierzęta mają prawa na Słowacji?

ABSTRACT

This article focuses on assessing whether the current Slovak legal framework provides animals with a sufficient level of protection against cruelty and maltreatment. Past and current Slovak legislation on animal protection was analyzed in light of the major animal welfare challenges that Slovakia faces today. Contrary to what the title of the study suggests, a different approach was chosen to strengthen the protection of animals – not through the concept of animal rights, but the concept of human rights to a favourable environment. In addition, the possibility of using the already existing environmental law legal instruments when the well-being of animal is threatened was discussed.

Keywords: animal protection; environmental law; Slovak legislation

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INTRODUCTION

Do animal protection laws in Slovakia grant any legal rights to animals or do they rather protect the interests of us humans by imposing the duties of how animals should be treated and cared for?

None of those questions, in particular, will be the subject of this paper. Our aim is not to continue with the endless discussion of whether animals should have any legal or moral rights, legal or moral standing guaranteed by law. We have rather chosen another approach aiming to discuss how to better ensure legal protection of those from a non-human animal world with the legal instruments we already have, with possible changes in the law the society would be able to accept.

In this paper, we introduce the development of Slovak animal welfare protection laws and discuss whether current legislation offers us legal instruments to effectively protect animals against suffering. We discuss animal welfare challenges Slovakia faces and whether the Slovak legal framework suffices to prevent violating animal welfare. We also discuss the possibility to protect animals as one of the components of the environment (besides the atmosphere, lithosphere and hydrosphere) and why also animal welfare could and should be protected within the human right to a favourable environment.

Even though, one might argue that such animal welfare protection through the concept of human rights, could not pass, because it does not have any direct effect on human life, we try to make suggestions why we think, this way could be a possible step forward. Such an idea resulted from the knowledge obtained on the basis of the cooperation with animal welfare protection organizations in Slovakia.[1] However, we have not found any literature where this idea would be already discussed in Slovakia.

In this scientific paper, we focused on the analysis of past and current legal frameworks and on assessment of the level of protection it offers animal welfare. We also aimed to assess what legal instruments are available to secure animals against cruelty and maltreatment and tried to suggest the possible pathway for guaranteeing a higher level of animal welfare protection in Slovakia. The methods we used were especially the analysis of past and current legislation and legal theory, interview with animal welfare organizations members, questionary addressed to State Food and Veterinary Authority of the Slovak Republic, and method of synthesis.

[1] Alliance of Animal Welfare Associations NGO and Fallopia NGO, project "Animal Ombudsman". Chairwoman of the Board and Ombudsman for Animals, Zuzana Stanová.

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RESEARCH AND RESULTS

The interest in the protection of animals against suffering grew, especially in recent decades. Public interest in better breeding conditions and reduction of suffering has increased with intensification of agriculture, the emergence of large-scale farming and the use of animals for experimental purposes. Such public interest hand in hand with scientific progress disproved the argument that animals are unconscious and could not feel and suffer. Such a significant change in attitude and the emergence of certain moral obligations of humans towards the animal required the adoption of legal instruments to enforce compliance of its rights.

1. The commencement of legal animal welfare protection in European territory

The origins of animal protection laws in European territory could be traced at the turn of the 18th and 19th centuries at a time which M. Radford describes as the dreadful conditions of livestock farming in London.[2] Along with the wave of humanism, with an interest in human welfare, there has been a growing interest in animal protection and welfare too. Through the spread of new philosophical schools, M. Radford states that as early as the second half of the 18th century, there were a relatively large number of books dealing with human responsibility towards animals.[3]

Also at that time, J. Bentham criticized the treatment of animals used either in scientific research, agriculture or for "entertainment" in the form of dog fights and bull chasing. Bentham's utilitarianism, the greatest happiness for the greatest number, did not focus exclusively on humans. In the development of the human–animal relationship, he shifted the emphasis from originally perceived moral differences between humans and animals, which lay in the animal's inability to think and use language, to similarities they share.[4] He also emphasized their ability to feel pain and suffer. Even though J. Bentham agreed that humans have the moral right to consume and otherwise use animals, but opposed their cruel treatment and abuse.[5]

[2] M. Radford, *Animal Walfare Law in Britain: Regulation and Responsibility*, Oxford 2001, pp. 17–19.

[3] H. Mullerová, V. Stejskal, *Ochrana zvířat v právu*, Praha 2013, pp. 121–122.

[4] The question is not whether they can reason or whether they can speak, but whether they can suffer. See J. Bentham, *An Introduction to the Principles of Morals and Legislation*, Oxford 1907, note no. 329.

[5] H. Mullerová, V. Stejskal, *op. cit.*, p. 40.

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2. The commencement of legal animal welfare protection in Slovakia

Turning into legal development of animal welfare protection in Slovakia, the beginnings of modern animal protection laws that would start to reflect international (even though predominantly soft) law and change of social conditions could be dated back to when the communist regime in the Czechoslovak Socialist Republic collapsed in 1989. State Veterinary Authority of Czech Republic on 24 September 1990, based on Section 6 of the Law no. 87/1987 Coll. on Veterinary Care (hereinafter: Veterinary Act 1987), adopted instructions defining what act should be considered as cruelty to animals for the purposes of administrative liability enforcement.[6] Subsequently, on 23 May 1991, an amendment to the Veterinary Act 1987 has been adopted, which authorized State Veterinary Authority as supervisory authority to control prevention of cruelty to animals.[7] These were considerable steps forward. Even though the Veterinary Act 1987 laid down the ban of cruelty to animals, however neither this act nor any previous law defined what act is considered cruelty to animals. Even though the possibility to be punished for such an act was laid down in Section 29 (2b), in reality, no penalties were imposed[8]. Moreover, before 1991 State Veterinary Authority was not authorized to control the prevention of animal cruelty, therefore no authority could enforce administrative liability.

At that time, no other form of animal welfare protection was available just until 1 January 1992, when the amendment of Law no. 140/1961 Coll. Criminal Act (hereinafter: Criminal Act 1961) made cruelty to animals a criminal offence.[9] Later, on 1 January 1993, after the federal republic of Czechoslovakia split into the independent countries of the Czech Republic and Slovakia, significant change between the development of Slovak and Czech legislation could be observed.

While in spring of 1992 Czech Republic adopted a new Law no. 246/1992 Coll. on the Protection of Animals Against Cruelty, in Slovakia animal protection legislation remained the same, based on one provision Section 6 of the Veterinary Act 1987 up until 7 July 1995, when a new Law no. 115/1995 Coll. on the Protection of Animals (hereinafter: Animal Protection Act 1995) entered into force. Animal Protection Act 1995 was the first in the territory of the independent Slovak Republic that enacted duties and responsibilities of every person towards animals, especially for animal owners and breeders and defined the term "animal".[10] The Act laid down breeding and keeping conditions[11] as well as the protection of animals

[6] *Ibidem*, p. 295.

[7] Section 22 (1) (h) of the Law no. 87/1987 Coll. on Veterinary Care.

[8] H. Mullerová, V. Stejskal, *op. cit.*, p. 295.

[9] Section 230 of the Law no. 140/1961 Coll. Criminal Act.

[10] Section 1 (2) of the Law no. 115/1995 Coll. on Protection of Animals: "For the purposes of this Act, an animal is any vertebrate other than a human".

[11] Section 2 of the Law no. 115/1995.

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during transport,[12] banned particular types of acts towards animals,[13] specified the condition, circumstances and how animals should be killed, as well as laid down the banned methods of slaughtering animals in general.[14] In particular, the Act stated special rules for the protection of different animal species, farmed animals,[15] companion (pet) animals,[16] animals used for scientific purposes[17] and also defined competencies of animal welfare authorities,[18] to control compliance with set duties.

Moreover, when bearing in mind one of the main challenges Slovakia faces, illegal pet breeding and trade, one particular provision is worth mentioning. Based on Section 20 of the Animal Protection Act 1995 only a "qualified" person after written notification to the animal welfare authority may have bred pet animals for commercial purposes. Under a term "qualified person", the law understood a person authorized to conduct a business in compliance with Law no. 455/1991 Coll. Trade Licensing Act. No subsequent law enacted, required such "qualification" even now. However, the legal situation changed. Since the Animal Protection Act 1995 was replaced by Law no. 488/2002 Coll. Veterinary Act (hereinafter: Veterinary Act 2002) just until now, Slovak law did not require pet breeders to register or to at least file a written notification about the commencement of the breeding activity for commercial purposes.

The Veterinary Act 2002 aiming to harmonize Slovak legislation with the EU legislation thus replaced the only Act regulating animal welfare protection ever in Slovakia as a special law, separately from veterinary requirements. Since 2002 the protection of animals became a part of veterinary requirements under the Veterinary Act 2002, that was quite early replaced by new Law no. 39/2007 Coll. Veterinary Act (hereinafter: Veterinary Act 2007), currently in force.

Animal welfare protection is mostly regulated by State Administration Legislation, however since the amendment of the Criminal Act 1961, also criminal law instruments have become available to protect animals against cruelty. Since 1 January 2006, a new Law no. 300/2005 Coll. Criminal Act have come into force, however, up until its amendment from 2011,[19] only cruelty to animals committed with and intention (dolus)[20] was considered a criminal offence. Two important amendments have been made. One in the year 2011, when the new criminal offence, animal

[12] Section 3 of the Law no. 115/1995.
[13] Section 4 of the Law no. 115/1995.
[14] Section 5 of the Law no. 115/1995.
[15] Section 12 of the Law no. 115/1995.
[16] Section 16 of the Law no. 115/1995.
[17] Section 24 ff. of the Law no. 115/1995.
[18] Section 29 ff. of the Law no. 115/1995. The animal welfare authorities were: Ministry of Agriculture of the Slovak Republic, State Veterinary Authority and Regional Veterinary Authorities.
[19] Amanded by Law no. 262/2011 Z. z.
[20] Section 378 of the Law no. 300/2005 Coll. Criminal Act.

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neglect,[21] have been added and the most recent and important one just on 11 November 2020,[22] that not only enacted a new criminal offence, organized dogfighting, and set more severe punishment by increasing penalties, but also categorized criminal offences against animals under the environmental criminal offences.[23]

Legal development, naturally hand in hand with the development of society, could be found not only in public law but also in civil law. In Slovakia, the very old Civil Code is still in effect, the Law no. 40/1964 Coll. Civil Code (hereinafter: Civil Code). Up until 2004 the position of the animals in private law relations, especially between seller and buyer have been stated only for product liability. The product liability provisions referred to animals as products/things.[24] Up until the Civil Code amendment in 2018, it did not pay any special attention to the position of animals.

In 2018, as a result of animal protection group initiatives to tackle the non-existing position of animals in the law, or rather to change their civil law implied status as only the subject of property rights, the Civil Code has been amended[25]. According to Section 118 of the Civil Code the core status of animals as a subject of civil rights especially property rights remains the same, however in accordance with Section 119 (3) "the living animal is of special importance and value as a living sentient creature and has a special position in civil law relations. The provisions on movable property shall apply to living animals; the provision does not apply if it is contrary to the nature of the living animal as a living creature".

Even though, current the status of animals granted by the Civil Code is rather of moral or philosophical nature, however, the way morality influences the law, the way the law dictates what is right or wrong, what is mortal or immortal. Therefore, if we compare the status of animals back in few hundred years ago based on documents available to us with their status today, we can see and we quite dare to say feel the difference. The main difference is in our attitude towards them. If not, we would probably feel no discomfort reading A.E. Poe's *The Black Cat*. If we would perceive animals as mere object/thing comparable to our smartphones, in case the owner, a little intoxicated by alcohol, would grab his cat and would cut out one of his eyes, just because anger would possess him, there would be nothing wrong with this act.[26] Especially in case, it would be done in private so no public nuisance is

[21] Sction 378a of the Law no. 300/2005: "Any person who, through negligence, causes death or permanent injury to more than two animals which he owns or which he is obliged to take care of by neglecting the necessary care for those animals shall be punished by imprisonment for up to two years".

[22] Amanded by Law no. 288/2020 Z. z.

[23] Currently, criminal offences against animal welfare are laid down in Sections 305a, 305b and 305c of the Law no. 300/2005.

[24] Sections 599 and 620 of the Law no. 40/1964 Coll. Civil Code.

[25] Amanded by Law no. 184/2018 Z. z.

[26] The example inspired by P. Singer.

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caused and if the cat belongs to the person in question, no property right is violated. In fact, the owner would probably cause less damage to his property injuring the cat rather than the smartphone.

However, all of the respondents we asked in questionary (20 respondents) for whether they see any difference between damaging one's cat and damaging one's smartphone, stated the act towards the cat as wrong and immoral and act towards the phone rather neutral.

At present, there is no doubt about the ability of animals, especially mammals, birds but also other species, to be sentient beings[27] to such an extent that was, just until recently, attributed only to humans. The development of science, therefore, provides us with an answer to the polemics of whether animals are just animated machines[28] without soul or consciousness or whether they are able to feel and respond to external stimuli and mentally experience them positively or negatively, similarly to us, humans.

Probably the lack of knowledge, the perception of the position of animals through an anthropocentric view, supported by the prevailing Christian teaching in our territory,[29] placed the animals into the position of the object of property rights, object given to fulfil human's needs.

However, there are quite significant changes recently that also current legal framework partially reflects and it seems from animals protection to shift much further. But does current legislation suffice to face modern challenges animal welfare in Slovakia faces too?

3. Is animal welfare protection effectively guaranteed or not?

Animal welfare in Slovakia is regulated mostly by administrative law legislation. As a part of public law, it does reflect the public interest in the protection of animals against cruelty and maltreatment. The Civil Code emphasizes the impor-

[27] *Cambridge Declaration on Consciousness*, 2012; European Food Safety Authority, *Animal Consciousness: External Scientific Report*, 2016.

[28] R. Descartes wrote on Animals as "animated machines". According to him, "(1) Animals are machines. (2) Animals are automata. (3) Animals do not think. (4) Animals have no language. (5) Animals have no self-consciousness. (6) Animals have no consciousness. (7) Animals are totally without feeling". See P. Harrison, *Descartes on Animals*, "The Philosophical Quarterly" 1992, vol. 42(167).

[29] Considering the statements of the Book of Genesis, according to which man was given control over animals, but this rule should not be exercised in a cruel and torturous way, but compassionately and respectfully. We consider the influence of culture and religion on the perception of the position of animals and their protection to be an interesting topic for further research, taking into account Buddhism and Hinduism, with quite positive approach to animal protection. Somewhere in the middle stands the Christian and Jewish religions and on the other side, with one of the worst animal welfare protection, with currently mostly atheistic population stands China, with historical influence of Confucianism on the status of animals.

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tance of animals as living sentient creatures. Moreover, Slovakia as an EU Member State shall pay full regard to the welfare requirements of animals.[30]

Since 2007, animal welfare protection has been laid down in the Veterinary Act 2007 as a part of the veterinary requirement. Particularly in Section 22 of the Act, which sets the duties and obligations of the owner, breeder or keeper towards animals to secure their protection and well-being. Under the protection and well-being, the Act understands that animals are able to build a good relationship with the environment and other animals, with regard to the species of animals kept, their stage of evolution, adaptation and domestication, good health, physiological and ethological needs are met and fulfilled as well as freedom of movement, building of social relations and ability to manifest natural behaviour. Section 22 (2) and (3) forbids cruelty to animals[31] and defines what act is considered animal cruelty as well as defines what act is considered torture of animals to death. The following paragraphs laid down the duties of the Ministry of Agriculture of the Slovak Republic and municipalities to build shelters and quarantine facilities for animals. Municipalities also have a specific obligation to ensure the capture of stray animals in their territories. The Veterinary Act 2007 sets the competence to carry out veterinary controls over compliance with animal welfare requirements as an integral part of general veterinary requirements under the Act. It belongs to the State Food and Veterinary Authority (hereinafter: State Veterinary Authority) and the Regional Food and Veterinary Authorities (hereinafter: Regional Veterinary Authority). When carrying out veterinary controls Veterinary Officers are authorized to enter the premises, buildings, facilities, as well as the home of the person keeping animals in case the health and welfare of the animals are threatened. With regard to a particular case, if animal health, human health or animal welfare is threatened or if there is a suspicion of breach of obligations or non-compliance with the requirements laid down in the Veterinary Act 2007 or special laws, Veterinary Officer shall adopt measures such as confiscation of animals or placement of animals in temporary care, etc.[32]

The most recent amendment of the Veterinary Act 2007 enacted the authority of State Veterinary Authority to decide on restriction or ban of breeding or keeping animals in case veterinary requirements are repeatedly not fulfilled.[33]

The fulfilment of duties and obligations towards animals are guaranteed by enforcement of administrative liability and by penalties which could be imposed by the State Veterinary Authority. The public interest in animal welfare protection against suffering is supported by Criminal Law penalties as well.

[30] Article 13 of the Treaty on the Functioning of the European Union (OJ C 326/1, 26.10.2012).

[31] The provisions of Section 22 (2) to (4) of the Law no. 39/2007 Coll. Veterinary Act only apply to vertebrates.

[32] Section 14 (2) of the Law no. 39/2007.

[33] Section 48 (8) of the Law no. 39/2007.

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Animal welfare protection is also laid down as a part of general veterinary requirements as well in implementing acts to the Veterinary Act 2007 and EU secondary legislation.

EU secondary legislation on animal welfare could be briefly summed up as follows. Directives cover the different aspects of the welfare of farmed animals.[34] Specific aspects are covered by EU legislation on transport[35] and slaughter.[36] Specific EU requirements apply to the keeping of calves,[37] pigs,[38] laying hens[39] and broilers.[40] Animals used for experimentation[41] are also subject to specific rules on animal welfare. EU legislation on zoos[42] focuses on species conservation but with consideration for animal welfare.[43] No EU legislation exists on the welfare of pets.

Special legal frameworks for different animal species could be found in a number of implementing acts. Implementing acts regulate the protection of farmed animals,[44] companion (pet) animals,[45] animals used for experimentation,[46] animals

[34] Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ L 221/23, 8.08.1998). In addition, by Council Decision 78/923/EEC of 19 June 1978 concerning the conclusion of the European Convention for the protection of animals kept for farming purposes (OJ L 323/12, 17.11.1978), the Union made this convention part of EU law.

[35] Council Regulation (EC) no. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) no. 1255/97 (OJ EU L 3/1, 5.01.2005).

[36] Council Regulation (EC) no. 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ EU L 303/1, 18.11.2009).

[37] Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10/7, 15.01.2009).

[38] Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ EU L 47/5, 18.02.2009).

[39] Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens (OJ EU L 203/53, 3.08.1999).

[40] Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ EU L 182/19, 12.07.2007).

[41] Directive 2010/63/EU of the European Parliament and the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ EU L 276/33, 20.10.2010).

[42] Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ EU L 94/24, 9.04.1999).

[43] According to the European Union Strategy for the Protection and Welfare of Animals 2012–2015.

[44] Regulation of the Government of the Slovak Republic no. 322/2003 Z. z. on the protection of farmed animals; Regulation of the Government of the Slovak Republic no. 730/2002 Z. z. laying down minimum standards for the protection of calves; Ordinance of the Ministry of Agriculture of Slovak Republic no. 178/2012 Z. z. on identification, registration and minimum standards for breeding and keeping farmed animals.

[45] Ordinance of the Ministry of Agriculture of Slovak Republic no. 283/2020 Z. z. laying down requirements for the protection of pet animals, requirements for the capture of stray animals and requirements for quarantine facilities and animal shelters.

[46] Regulation of the Government of the Slovak Republic no. 377/2012 Z. z. laying down requirements for the protection of animals used for scientific or educational purposes.

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used for public performance[47] and dangerous animals in captivity.[48] According to the Veterinary Act 2007, the Ministry of Agriculture has an obligation[49] to adopt an implementing act for the protection of wild animals in captivity, however, still have not done so. Just recently, on 15 January 2021, the draft ordinance has been announced by the Ministry of Agriculture. The draft text has not yet been published, even though the anticipated date of passing is set at April 2021.

The most important acts from those above-mentioned are the ordinance of the Ministry of Agriculture on the protection of pet animals and the anticipated ordinance on the protection of wild animals in captivity. The former has been adopted just recently, on 10 October 2020. The new ordinance brought quite significant changes as a result of implementing EU Animal Health Law. In order for foreign readers to understand why, we will briefly mention the biggest challenge Slovakia nowadays faces, the online pet trade.

Based on an analysis[50] funded by the European Commission to determine the level of welfare compliance in animal trade, in particular in trade with dogs and cats, it was estimated that approximately 46,000 dogs are traded between the Member States each month. Compared to the number of 20,779 which represents the number of dogs registered in the TRACES system in 2014 for intra-EU trade, we have a relatively large number of uncontrolled movement of these animals across borders, with potentially negative consequences such as threats to animal welfare, public health, consumer protection and EU single market rules.

The legislation of EU Member States in this area is different, inconsistent. EU secondary legislation does not regulate the conditions for the transport of pet animals for commercial purposes, only general rules on animal transport apply. According to analysis[51] on the sourcing of pet dogs from illegal trade, it is very difficult to assess whether the transport of animals is part of legal or illegal trade or whether the animals are just accompanying their owner.

The data obtained by Belgium, which recorded eight times more dogs entering Belgium than registered for trade by TRACES in 2012 underline the shortcoming of the TRACES system.

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[47] Ordinance of the Ministry of Agriculture of Slovak Republic no. 350/2019 Z. z. laying down the requirement for the use of animals for public performance or training for public performance and the list of animals for possible to use for public performance.

[48] Ordinance of the Ministry of Agriculture of Slovak Republic no. 143/2012 Z. z. on the breeding and keeping of dangerous animals.

[49] In accordance with the Section 53 (1) (c) of the Law no. 39/2007.

[50] Study on the welfare of dogs and cats involved in commercial practices, financed by the European Commission SANCO 2013/12364, IBF International Consulting, VetEffecT, Wageningen University & Research Centre, Istituto Zooprofilattico Sperimentale dell'Abruzzo e del Molise "G. Caporale", 2015.

[51] T. Wyatt, J. Maher, P. Biddle, *Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016–17*, Edinburg 2017.

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Based on the conclusions of the conference "The welfare of dogs and cats involved in commercial practices" of 12 November 2015,[52] it should be noted that only 13% of pets come from professional breeders, although such estimation is considered problematic as in many countries of dogs origin there is no legal definition of a professional breeder (that is also the case of the Slovak Republic).

The Slovak Republic is among those EU Member States known as "puppy production countries", together with Hungary, the Czech Republic, Poland and Romania.[53] The non-profit organization Four Paws even identifies the Slovak Republic together with Hungary as leading breeders and traders, especially in relation to German and Austrian trade. The analysis also lists many complaints Four Paws received from buyers, on the basis of which they initiated investigations and filed many civil actions.

Through a freedom of information request addressed to the State Veterinary Authority of the Slovak Republic, we were provided with information from the TRACES system containing the number of seized dog and cat transports. Dogs and cats were transported for the purposes of sale in another Member State originating from the territory of the Slovak Republic and were not in accordance with the legislation of Member States in question. Notifications recorded in TRACES collected data with a number of cats and dogs that were subject of such illegal transportation (see Table 1).

Table 1. Data on the number of cats and dogs being illegally transported

Year of notification	Number of pets (dogs and cats)
2017	801
2018	74
2019	1,711
2020 (until 30 September 2020)	854

Source: own elaboration.

The most frequent infringements were following:
- loading density exceeded,
- exceeded transport time,
- invalid destination address,
- unapproved (illegal) breeding,
- missing/invalid certificate,
- non-compliance with national requirements.

[52] Study on the welfare of dogs and cats…
[53] *Ibidem*, p. 5.

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We also received data from the State Veterinary Authority of the Slovak Republic on the number of complaints they received over the last four years against alleged illegal breeders in Slovakia (see Table 2).

Table 2. Data on the number of complaints against alleged illegal breeders in Slovakia

Year	Number of complaints
2017	102
2018	105
2019	142
2020 (until 30 September 2020)	75

Source: own elaboration.

Up until 15 October 2020, there has been no legal framework in Slovakia regulating breeding pets for sale. We could say that the pet transports which have been seized in other countries and considered as illegal pet trade based on their domestic legislation, in Slovakia no laws have been violated with the exception of EU requirements, the individual pet registration and identification with microchip and registration in the TRACES system and health checks before the transport. As far as requirements for keeping and breeding pets are concerned, EU legislation does not directly regulate them, only as part of the rules governing the Animal Health Law, for the purposes of securing public health especially when animals are transported and traded outside the state of origin. EU secondary legislation directly regulates only the conditions of transport of pets for non-commercial movement, for the purposes of travelling with pets.[54]

Currently, due to the implementation of the EU Animal Health Law into Slovak legal order, every breeder who wants to trade animals has to be registered at the State Veterinary Authority registrar.[55] Moreover, if the breeder runs a facility for gathering animals before transport, he has to notify the Veterinary Authority of the commencement of such activity.

The Ordinance on Protection of Pets also regulates the minimum standards by which animals could be bred.

Bearing in mind the status Slovakia has in the other Member States and the consequences resulting in animal welfare violations, when it comes to illegal pet trade, the adoption of the new ordinance should have been of the highest priority.

Through the freedom of information request addressed to the State Veterinary Authority, we requested how many breeders have registered since the Ordinance on

[54] Regulation no. 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) no. 998/2003 (OJ EU L 178/1, 28.06.2013).

[55] Section 3 (4) of the Ordinance of the Ministry of Agriculture of Slovak Republic no. 283/2020.

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Protection of Pets came into force. Based on information from the State Veterinary Authority registrar, up to date of 27 February 2021 only 41 breeders have been registered. In our opinion, without any doubt, such new legislation had actually no beneficial effect, especially if we compare one of online market and advertising platforms in Slovakia (bazos.sk), where up to date 30 September 2020 there were 4,228 advertisements for dog sale (some of them were advertisements for donations of dogs) and 2,102 advertisements for cat sale (some of them were advertisements for donations of cats).

As we mentioned above, it is estimated[56] that only 13% of the pets on market come from professional breeders. Concluding these facts, most of them are offered through bazos.sk probably come from unregistered breeding farms, which are currently one of biggest challenges animal welfare protection faces. These are the number of dogs and cats kept in small cages, intended only for fast production of puppies and kitties, without the possibility of free movement, access to natural light or ability to manifest their natural behaviour.

Does therefore current legislation seem to offer an effective measure to tackle down illegal pet trade originating in Slovakia? Not at all.

No administrative law neither criminal law penalties for non-compliance with the registration obligations could be imposed according to the current legal framework. Without registration, however, when pets are subject to transport and sale in other EU Member States, the traceability is really low. In case of some zoonoses are spread, the competent authority would not be able to trace the place of origin. Moreover, there is no requirement for commercial pet breeders to be authorized, similar to those when the Animals Protection Act 1995 was in force.

For citizens concerned, if they find out some animal is suffering from animal cruelty or maltreatment either due to breeding practices or just due to intentional violent acts or due to neglect in care, the only possibility how to secure their well-being and initiate the enforcement of administrative liability against the perpetrator is to file a complaint to the competent Regional Veterinary Authority. However, due to lack of personnel or due to fact that State Food and Veterinary Authority is by majority the Food Safety Authority, the controls are not carried out immediately, resulting in animal cruelty or in torture to death. Based on cooperation with the third sector project "Animal Ombudsman"[57] and their long term experiences in the field of animal welfare protection, even when inspections are carried out and precautionary measures need to be adopted, they are in majority cases not. Again it results in animal cruelty or in torture to death.

[56] Study on the welfare of dogs and cats….

[57] http://zvieraciombudsman.sk [access: 10.06.2021].

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4. Would the enactment of animal rights help to protect them?

Without any doubt, enactment of the legal status of animals in a position of legal subject with claim rights would have a positive impact on the level of protection guaranteed to them. However, the current social and political situation, according to what we mentioned above, is not prepared to change its current status any further. From the lawyer-activist point of view, based on our cooperation with animal protection groups, especially with lawyers active in the third sector project "Animal Ombudsman"[58] with dozens of daily animal welfare violation reports, there is a need for effective and promptly available instruments of how to secure the protection. Protection not only against perpetrators but especially against state authorities that are unable to adopt effective measures already available to them in current legislation. That is the reason why we chose a rather unconventional approach of how to secure them better protection, through the concept that Slovak law already recognizes, the concept of human rights as the strongest and most effective legal instrument. Inspired by environmental law legal instruments and by H. Mullerová's chapter *Animal Rights or Rrather Human Rights to Animals Protection*,[59] more effective way of how to strengthen their protection is thought the strengthened position of already existing institute of public concerned in environmental matters or through the establishment of the independent authority with competence to oversee the state veterinary administration. Even though criticism towards too much broadening the scope of human rights as well as possible counter-arguments, whether through the concept of human rights, right to animal welfare protection could be justified, we think that it is worth trying.

In her article, H. Mullerová sees the potential counter-argument in the very essence of human rights – in whether human rights may serve to protect human interests which violation would not have a negative direct impact on human life, such as the extinction of some of the endangered species that would not cause any threat, through the ecosystem changes, to humans.

The question of whether such values should be protected through the concept of human rights is subject to debates on anthropocentric vs. ecocentric viewpoints. The tension arises not only between the group of let's say fundamental anthropocentrists and ecocentrists. Fundamental anthropocentrism claims that the protection of the environment, as well as animal protection, should be secured to such an extent, it

[58] Memorandum of Cooperation supporting better animal protection enforcement between on the one side Fallopia and the Alliance of Animal Protection Associations – project "Animal Ombudsman" and on the other side Comenius University in Bratislava.

[59] H. Mullerová, *Práva zvířat, nebo lidské právo na ochranu zvířat*, [in:] H. Mullerová, D. Černý, A. Doležal, *Kapitoly o právech zvířat: „my a oni" z pohledu filozofie, etiky, biologie a práva*, Praha 2016, pp. 499–511.

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may threaten human rights. For example, the protection of animals against cruelty because of one's property rights or because the violence towards animals is likely to develop into violence against humans. On the opposite side stands fundamental ecocentrism, with the claim that animals should not be treated as mere objects but should be able to enjoy rights and not serve to fulfil human's needs. If we set such boundaries, the protection of animals against cruelty because of their own interests not to feel pain and suffer through human rights, stands somewhere in between.

According to such a "mild anthropocentrism/mild ecocentrism", we should not ignore the parts of nature that are not to our benefit as we are part of the environment. What is more, we are the only species who create and respect law and morality.[60]

H. Mullerová also discusses whether there is the possibility to enact such human right to protect the welfare of animals. In our opinion, however, there is no such need for new human rights to be created.

The Law no. 17/1992 Coll. Act on Environment defines the environment as everything that creates the natural conditions for the existence of organisms, including humans and is a prerequisite for their further development. Its components are mainly air, water, rocks, soil, organisms, ecosystems and energy.

Taking to account the legislator's explicit categorization of criminal offences against animal welfare under the environmental criminal offences[61] and the organisms (including animals) as an integral part of the environment, there should be no doubt that animal welfare protection is just a manifestation of the protection of the environment in general.

One counter-argument, already mentioned, could be that human rights to a favourable (good) environment cover only protection necessary to secure human survival. It is not the case already. The part of the human right to a favourable (good) environment is also the protection of biodiversity, ecosystems and protected (endangered) species of animals and plants, that are not necessarily a condition for human life. On what grounds, therefore, we should not consider animal welfare as a part of the bigger picture of environmental protection?

5. How human rights could prevent animal cruelty?

The right to a favourable (good) environment as a human right guaranteed by the Slovak Constitution[62] could be claimed against the state. The state has a duty to care for and protect the environment through legislative, executive and judicial

[60] *Ibidem*, p. 504.

[61] Before the amandement took effect, criminal offences against animal welfare were categorized under criminal offences against other rights and freedoms.

[62] Article 44 of the Law. 460/1992 Coll. The Constitution.

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bodies, in Slovakia especially through decision-making activities of public administration authorities based on Administrative Law provisions.

One of the most effective and important legal instruments citizens of Slovakia have is the institution of public concerned in environmental matters. In the position of public concerned they are able to claim their right to a favourable environment in administrative proceedings[63] through the procedural rights as Party or as Participant to proceedings, following Section 14 of the Law no. 71/1967 Coll. Administrative Procedural Code (hereinafter: Administrative Procedural Code) and with special laws. The public concerned institution has been implemented to Slovak legal order on the basis of the Aarhus Convention[64] and EU secondary legislation. Although the Aarhus Convention does not list any activities where animal welfare, in particular, is concerned for the purposes of Article 6 (1), in accordance with Article 9 (3) of the Convention, Section 14 of the Administrative Procedural Code and the case law of the Supreme Court of the Slovak Republic,[65] we believe that in such a case there is an administrative proceeding when animal welfare is concerned, the State Veterinary Authority should allow citizens association, and a party to the proceedings is a citizens' initiative or a non-profit organization dealing with animal protection.

Such a position for public concerned could increase the level of protection by external control over the decision-making processes of the State Veterinary Authority. We see potential benefits especially in the ability of non-profit organizations to raise objections,[66] to appeal against unlawful or wrong decisions or to file an action to administrative court against such unlawful decisions. Taking to account the animal welfare challenge Slovakia faces, the illegal pet trade[67] and trade with endangered animal species,[68] also the right to visit and inspect facilities where animals are kept and bred.

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[63] Accoding to special laws, covering the environemntal problem in question, such as EIA procedure, some procedures when nature protection and forest protection is concerned.

[64] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998 (Aarhus Convention).

[65] Judgement of the Supreme Court of the Slovak Republic of 22 June 2009, Case 5Sžp/41/2009, taking to account the judgement of the European Court of Justice of 8 March 2011, Case C-240/09.

[66] Many non-profit organizations focusing on animal protection cooperate with Veterinary University in Košice, or with Comenius University in Bratislava Faculty of Natural Sciences as well as members of such organizations are usually professionals from the field of animal health and welfare.

[67] Short documentary about illegal pet trade in Slovakia. See *Ďalšia psia množiareň s hroznými podmienkami. Reflexu sa podarilo do nej v utajení preniknúť*, 29.01.2021, www.tvnoviny.sk/publicistika/krimi-s-kristinou-kovesovou/2019257_dalsia-psia-mnoziaren-s-hroznymi-podmienkami-reflexu-sa-podarilo-do-nej-v-utajeni-preniknut [access: 10.08.2021].

[68] *Tigre ako tovar: Na stope obchodu s chránenými zvieratami a ich telami v strednej Európe*, 16.07.2020, www.icjk.sk/56/Tigre-ako-tovar-Na-stope-nelegalnemu-obchodu-so-zvieratami-a-ich-telami-v-strednej-Europe [access: 10.08.2021].

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As we have already mentioned, the State Veterinary Authority fails to effectively prevent animal cruelty to happen. Either due to lack of personnel stuff or just because veterinary officials are afraid to adopt measures such as to confiscate animals and place them in responsible organizations for care, even though the current law lays down an obligation to do so, in case health or welfare of the animal is threatened.

The legal framework, however, should not be so unclear and in order to fully secure better protection to animals, the legislator should take appropriate steps to enact the possibility of the public concerned to become a party to the administrative procedure when animal welfare is concerned.

CONCLUSION

As we pointed out in this paper, animal welfare protection has moved much further since before the Constitution of the independent Slovak Republic. However, is the current legal framework sufficient to effectively and timely prevent cruelty to animals and secure their welfare and well-being as living sentient creatures in the context of nowadays challenges animal welfare faces too? By the above discussion on animal welfare protection in theory and praxis, we are afraid to conclude that animal welfare protection in Slovakia is not sufficiently guaranteed by neither Administrative nor Criminal Law.

Even though there are some legal instruments available, such as filing a complaint to the State Veterinary Authority in case of animal welfare violations occur, however, those are certainly not effective enough. With the development of society and positive change in its attitude towards animals, new much stronger legal instruments should be adopted.

In our opinion, an institution of public concerned in environmental matters should also be enacted in the Veterinary Act of 2007, so that the animal protection organization could participate in animal welfare proceedings, and thus provide them with a higher level of protection through the right to a favorable environment.

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ABSTRAKT

W artykule skupiono się na ocenie tego, czy obecne słowackie ramy prawne zapewniają zwierzętom wystarczający poziom ochrony przed okrucieństwem i złym traktowaniem. Analizie poddano dawne i aktualne słowackie ustawodawstwo dotyczące ochrony zwierząt w kontekście największych wyzwań w zakresie ochrony dobrostanu zwierząt, przed którymi stoi obecnie Słowacja. Wbrew temu, co sugeruje tytuł opracowania, wybrano inne podejście do kwestii wzmocnienia ochrony zwierząt – nie poprzez koncepcję praw zwierząt, lecz poprzez koncepcję praw człowieka do przyjaznego środowiska. Ponadto omówiono możliwość wykorzystania już istniejących instrumentów z zakresu prawa ochrony środowiska w sytuacji, gdy dobro zwierzęcia jest zagrożone.

Słowa kluczowe: ochrona zwierząt; prawo ochrony środowiska; słowackie ustawodawstwo