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Protection of Animals and Protection from Animals as Seen by Polish Law

Ochrona zwierząt i ochrona przed zwierzętami w prawie polskim

ABSTRACT

The system of Polish law regulates both the protection of animals and the protection of humans from animals. Insofar as the first direction of regulations is strongly developed, popular, and fashionable and reflects the present-day trends in environmental protection law, the latter is not as popular. Both directions of the regulations show signs of axiological conflict. In the case of protection of animals, they are treated as a protected good, referring to their suffering, ability to feel, having emotions, etc. These circumstances do not only opt for covering animals by legal protection. Some people are even tempted to postulate the need for recognizing animals as subjects. However, the same animal that can suffer and feel and has emotions can pose a hazard to man – in certain extreme cases even a fatal one. Thus, animals are protected from humans, which is the right solution, but at the same time humans should be protected from animals. When exploring the issues of animal protection, it is worth remembering that such a second dimension exists.

Keywords: protection of animals; protection from animals; environmental protection law; Polish law

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INTRODUCTION

Animal welfare and animal rights have recently become increasingly popular objects of interest in law and legal sciences. The doctrine broadly focuses on this issue, which in consequence gains in scientific importance.[1] In fact, the ongoing debate on animals shows that this is a significant issue and is currently one of the main research problems, not only in the context of environmental protection law. However, the debate is mostly one-sided as it focuses on the protection of animals. On the other hand, it pays considerably less attention to the protection from animals. This can be justified because the legislator itself devotes much less attention to the protection from animals, which is an equally important issue.

Thus, a holistic approach takes into account both the protection of animals and the protection from animals. Only when these issues are analyzed collectively, can the problematic aspects of animal welfare and animal rights be seen correctly both from the point of view of protecting animals from humans and protecting humans from animals.

This article takes a holistic approach to these issues in an attempt to present both the part dealing with the protection of animals and that dealing with the protection from animals. Such a holistic approach will also make it possible to put axiological issues in the right perspective in the legal system. A perceptible trend exists that accentuates the need for protecting animals, even through conferring legal personality on them. Meanwhile, animals can also pose a hazard to human life and health, a fact which should be acknowledged and emphasized. This article only discusses general and introductory problems. It does not aspire to provide an exhaustive scientific insight on these issues.

PROTECTION OF ANIMALS

In the system of Polish law, the legislator devotes much more attention to the protection of animals than to the protection from animals. It can even be concluded that the protection of animals is a self-contained and autonomous legal problem regulated by a separate act – the Act of 21 August 1997 on the protection of animals.[2] However, for the issues being analyzed it is significant that the Animal Protection

[1] See, i.a., J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt?*, Toruń 2005; T. Pietrzykowski, *Spór o prawa zwierząt*, Katowice 2007; idem, *Etyczne problemy prawa*, Warszawa 2011, p. 210 ff.; *Status zwierząt. Zagadnienia filozoficzne i prawne*, eds. T. Gardocka, A. Gruszczyńska, Toruń 2012; D. Probucka, *Filozoficzne podstawy idei praw zwierząt*, Kraków 2013; K. Kuszlewicz, *Prawa zwierząt. Praktyczny przewodnik*, Warszawa 2019.

[2] Consolidated text, Journal of Laws 2020, item 639.

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Act does not contain all normative regulations in which an animal is the object of protection. Thus, in the system of Polish law, the protection of animals extends beyond the Animal Protection Act.

Therefore, it can be concluded that protection of animals is an independent legal value regulated in various legislative acts, and in the first place in the Animal Protection Act. Considering the scope of these regulations, it can even be inferred that a legal framework exists for protecting animal welfare and rights. The protection of animals as a standalone value protected by law materializes mainly in the Animal Protection Act itself. This Act traditionally falls within the scope of environmental law and is primarily analyzed in the context of environmental protection.[3] This means that animals are treated as an element of the natural environment and as such they are covered by environmental protection. However, it should be recognized that the protection of animals as individual creatures to take into account their individual needs and prevent them from suffering does not fall within the scope of the legal protection of the natural environment – or the environmental protection law – because its quality is different.[4] T. Pietrzykowski seems to present a similar view indicating that the axiology of regulations on the protection of animal welfare makes reference to moral limitations on harming animals, and not to the need for maintaining the natural environment in a proper, non-deteriorated state.[5]

Here, it should be clearly pointed out that respective elements making up the natural environment are not protected in an identical way. According to Article 3 (39) of the Environmental Protection Act[6] "environment shall mean the totality of natural elements, including those transformed as a result of man's activity, in particular the land surface, minerals, waters, air, landscapes, climate and other elements of biological variety, as well as interactions between such elements". Although animals are not listed in this provision *expressis verbis* as a natural element, the doctrine of the environmental protection law does not postulate that they are not a natural element and that they should be excluded from the scope of the definition of the environment. It is significant that although the lawmaker in Article 5 of the Environmental Protection Law declares that the protection is comprehensive, not all the natural elements are protected in an identical way. It is noticeable that animals are a natural element that is especially meticulously protected by the lawmaker. This

[3] See, i.a., A. Lipiński, *Prawne podstawy ochrony środowiska*, Warszawa 2010; M. Górski, J. Miłkowska-Rębowska, *Prawo ochrony różnorodności biologicznej*, Warszawa 2013; B. Wierzbowski, B. Rakoczy, *Prawo ochrony środowiska. Zagadnienia podstawowe*, Warszawa 2018; *Prawo ochrony środowiska*, ed. M. Górski, Warszawa 2018.

[4] K. Kuszlewicz, *op. cit.*, p. 42.

[5] T. Pietrzykowski, *Moralność publiczna a konstytucyjne podstawy ochrony zwierząt*, "Studia Prawnicze" 2019, no. 1, p. 11.

[6] Act of 27 April 2001 – Environmental Protection Law (consolidated text, Journal of Laws 2020, item 1219, as amended).

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is due to the fact that animals are treated as living creatures capable of suffering. Furthermore, the lawmaker itself in Article 1 (1) first sentence of the Animal Protection Act indicated that an animal is not an object.[7] It is difficult to assume that in relation to other natural elements, perhaps except for plants, the legal category "object" should be regarded as inadequate. This mostly refers to natural resources such as minerals, water, and surface of the Earth.

Even if *de lege lata* the issues of animal protection are regarded as an element of a wider reality of environmental protection, there is no doubt that the protection of animals is of a special and unique nature. Without any doubt elements of animal protection can be found in the Act of 13 October 1995 – Hunting Law.[8] Irrespective of the controversies around hunting and objections postulated in literature, there is no doubt that this Act also contains some elements of protection.[9] The protective nature of the Hunting Law is manifested in the definition of game management. Article 2 of the Hunting Law states that all game living in the wild is a national treasure and is the property of the State Treasury.

The Hunting Law is an act that is traditionally considered a part of environmental protection law. In a wider perspective, problematic aspects of hunting law are associated with the issue of protecting animate natural elements, including animals. Certain elements of animal protection can also be seen in the Act of 11 March 2004 on the protection of animal health and control of infectious diseases of animals.[10] Technically, the whole legislative act refers to the protection of animal health and care of animals as declared in its title. However, this very act is not classified as a part of environmental protection law but rather veterinary law, which virtually displays autonomous features of a comprehensive branch of law.

Also, the Hunting Law should not be evaluated without reservations solely as a source of environmental protection law. Although no theoretical research has been undertaken so far on Hunting Law to describe hunting law as a standalone field of law, or perhaps a complete branch of law, based on the considerations regarding Water Law or Forest Law, the characteristics of certain independence can be identified in Hunting Law. Of course, considerations on the links of respective legislative acts regulating issues of animal protection to specific fields of law are not of key importance. The efficiency of adopted normative solutions is not determined by the links a specific legislative act may have to a field or branch of law. Nevertheless, in the above-indicated circumstances it can be considered whether in

[7] See more in W. Radecki, *Ustawy: o ochronie zwierząt, o doświadczeniach na zwierzętach – z komentarzem*, Warszawa 200707.

[8] Consolidated text, Journal of Laws 2020, item 1683, as amended.

[9] See, i.a., M. Micińska, *Łowiectwo. Aspekt humanitarno-prawny*, Poznań 2014.

[10] Consolidated text, Journal of Laws 2020, item 1421.

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the system of Polish law it is possible to identify a certain standalone field of law – animal protection law – as a group of legal regulations forming a coherent system.

Without any doubt, the lawmaker focuses on a single value – the protection of animals. This value is protected in different ways, using various instruments and by means of various legislative acts. Sometimes the protection of animals is a self-contained object of a legal regulation (Animal Protection Act, Act on the protection of animal health and control of infectious diseases of animals), and sometimes it is a secondary but still self-contained element (the Hunting Law). Thus, the postulated criteria for a complete branch of law are satisfied in the context of animal protection. However, approaching the issues of animal welfare and rights not only through the prism of the protection of animals but also the protection from animals – as considered hereinafter – is much better substantiated in normative terms. Nevertheless, due to this reservation, the construction of a complete branch of law should take into account both protection of animals and protection from animals. Thus, a much more reasonable postulate would be to refer to this field as the law on the protection of animals and protection from animals.

A systematic approach of the lawmaker to animal protection makes it possible to see certain characteristic features. The lawmaker identified certain categories of animals subject to different instruments of legal protection. Such a categorization of animals can be mostly seen in the law on the protection of animals which lists, among other animals, domestic animals, homeless animals, animals used for entertainment (!), and farm animals. In turn, the Hunting Law uses the term "game". Such a division indicates that it is not possible to adopt a single catalog of universal and uniform legal instruments to protect animals. It is important to see which criteria were used to identify respective categories of animals. The lawmaker used them considering the specific living (existence) conditions for a given category of animals. Thus, instruments protecting respective animals are linked to their way of life (existence).

Certain universal generalizations can be found in the Act of 15 January 2015 on the protection of animals used for scientific or educational purposes.[11] The Act refers to universal protection of animals that can be subject to experiments and this protection aims to eliminate or at least reduce the level of suffering. The European lawmaker pursues the same goal in 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[12] in which the issue of animals is regulated. Also in this case, the objective was to reduce and even eliminate suffering of animals in connection with their

[11] Consolidated text, Journal of Laws 2019, item 1392, as amended.
[12] OJ EU L 3/1, 5.01.2005.

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carriage and transport. It is important that the lawmaker also presents a universal approach to this issue, irrespective of the species or type of transported animals.

A very significant characteristic of the lawmaker's systematic approach to problematic aspects of animal protection is the establishment of specialized public administration bodies and commissioning of tasks related to animal protection to non-specialized local administrative units. Specialized bodies comprise veterinary administration authorities such as the District Veterinary Surgeon, Regional Veterinary Surgeon, and Chief Veterinary Surgeon.[13] These bodies operate pursuant to the Act of 29 January 2004 on Veterinary Inspection.[14] However, it should be emphasized that a large part of tasks in connection with animal protection are also fulfilled by local authorities, whereas their tasks are mostly regulated in the Animal Protection Act and in the Act of 13 September 1996 on maintaining cleanliness and order in municipalities.[15]

With reference to the issues of animal protection, specific entities such as the National Ethics Committee for Experiments on Animals and local ethics committees for experiments on animals should also be mentioned. Article 32 (1) of the Act of 15 January 2015 on the protection of animals used for scientific or educational purposes[16] directly stipulates that the aforementioned bodies are the competent authorities to issue and change consents to experiments.

These committees are public administration bodies with governing powers. The committees are also equipped with a range of non-governing powers that mostly include giving opinions and advice. Thus, the lawmaker combines their governing power with non-governing methods of action. However, these are specialized bodies appointed specifically for the purposes of animal protection.

PROTECTION FROM ANIMALS

The problematic aspects of protection from animals are not as widely regulated by the lawmaker as the protection of animals alone. This does not mean that they are less important though – in light of prevailing trends – they are certainly less popular.

The coexistence of humans and animals does not only mean that humans have an obligation to take care of animals, provide them with adequate living conditions and protect them from pain and suffering. Their coexistence assumes that an animal can pose a danger to man.

[13] See M. Rudy, *Wstęp do prawa sanitarnego i weterynaryjn*ego, Wrocław 2010.
[14] Consolidated text, Journal of Laws 2021, item 306.
[15] Consolidated text, Journal of Laws, item 1439.
[16] Consolidated text, Journal of Laws 2019, item 1392, as amended.

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In such a situation the lawmaker is required to provide an individual with protection, even if from animals. However, such an approach leads to man–animal antagonism. As long as animal protection refers to a benevolent coexistence of humans and animals assuming that man must take care of animals, there is also another dimension in which the coexistence of humans and animals is not benevolent at all since it refers to a hazard that may be posed by animals to humans.

Here, one of the fundamental legal maxims should be recalled: *Ubi societas, ibi ius*. It means that law is an instrument for shaping social relations and these occur between people only. Thus, law cannot shape the relations between humans and animals. I skip the widely discussed and disseminated concept of subjective rights of animals and considering animals as legal subjects, as it goes beyond the main scope of this article. Even if the above-mentioned concept is adopted, it should be consistently implied that one legal subject – man – can harm another legal subject – animal. In turn, an animal can also harm a man. The lawmaker cannot neglect this situation as it should be regulated by law as well.

However, imposing obligations on animals to abstain from specific behaviour towards humans like specific obligations are imposed on humans to abstain from specific behaviour towards animals would be an absurdity. Thus, the lawmaker is faced with a difficult task, since, on the one hand, it cannot impose any obligations on animals (not to mention sanctions). On the other hand, though, it is obliged to protect humans from animals realizing that a behaviour of an animal can pose a hazard to human health or even human life.

A solution adopted by the lawmaker – which can be called a system solution – provides for imposing certain obligations on the owner of an animal and, as a consequence, the legal liability of the owner of such an animal.[17] However, the lawmaker makes a reasonable assumption that in this case an animal cannot be the subject of legal liability because this is reserved for humans only. In this regard, the problem of recognizing animals as legal subjects is not brought up.

The issue of protection from animals is mostly regulated in the Act of 13 September 1998 on maintaining cleanliness and order in municipalities.[18] As stipulated in Article 3 (2) of this Act, "Municipalities shall keep their area clean and orderly and create conditions necessary to maintain cleanliness and order, and in particular: […] 13) formulate the requirements to people keeping domestic animals with regard to safety and cleanliness in public areas; […] 16) apply appropriate markings in areas affected or threatened by an infectious disease of animals".

The fundamental instrument used in fulfilling such tasks is the rules for maintaining cleanliness and order in the municipality. Article 4 (2) of the Act specifies in normative terms the components of the rules for maintaining cleanliness and

[17] It should not be forgotten that the history of law saw cases of animals being held legally liable.

[18] Consolidated text, Journal of Laws 2020, item 1439.

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order. Pursuant to this provision, "The Rules describe in detail how cleanliness and order should be maintained in the municipality to the extent of: […] 6) obligations of owners of domestic animals to protect other people from hazard or nuisance and from fouling the area for common use; 7) requirements with regard to keeping farm animals in an area excluded from agricultural production, including a ban on keeping them in specific areas or respective real properties".[19]

Point 6 is very important as it not only imposes obligations on the owner of an animal but directly indicates why such obligations are imposed. The lawmaker clearly indicates that their purpose is to protect people from hazard or nuisance and from fouling the area for common use. Thus, it rightly states that animals can be a nuisance and a hazard to humans. Further, it aptly assumes that animals can foul areas meant for common use.

W. Radecki states that this "provision is universal; it does not refer to domestic animals only but also or perhaps mostly to farm animals (a standard precaution is, for example, keeping a grazing bull on a leash), but it certainly refers to dogs of all breeds, aggressive or otherwise. […] They may refer to the use of muzzles, walking with dogs on a leash, displaying warning signs, etc. […] The regulation in Article 4 (2) (6) of the Act on maintaining cleanliness and order in municipalities is not limited to the issues of safety but also refers to protection of common grounds (roads, playgrounds, parks, other green areas, etc.) against contamination, which in fact are deemed public areas. The most important obligation that may be imposed is the obligation to pick up dog or cat waste. […]".[20]

In turn, point 7 of this Act refers to farm animals. In this case, however, the lawmaker points to requirements regarding keeping such animals in areas excluded from agricultural production. It also indicates that the municipality council can impose a ban on keeping such animals in certain areas or within respective real properties. However, contrary to point 6, the lawmaker does not give a normative indication of the purpose of introducing such solutions. This means that it can only be introduced by way of interpretation of law and is identical to the purpose of solutions adopted in point 6, although the issue of nuisance of farm animals to humans plays a bigger role here.

The above-quoted provisions of the rules for maintaining cleanliness and order in municipalities in normative terms point to antagonisms in the coexistence of humans and animals.

A significant axiological conflict can be seen here, settled by the lawmaker for the benefit of protecting people from animals. However, a view that is interesting in this context was presented by the Voivodeship Administrative Court in Gdańsk

[19] Cf., i.a., B. Rakoczy, *Utrzymanie czystości i porządku w gminach*, Warszawa 2014.

[20] W. Radecki, *Ustawa o utrzymaniu czystości i porządku w gminach. Komentarz*, Warszawa 2016, p. 170.

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in the statement of reasons to the judgement of 3 February 2021,[21] which indicated that in the case of dogs the intended objective of the lawmaker was ensuring governance, order and lack of nuisance but upon an assumption that an animal as a living creature capable of suffering is not an object. Therefore, man must respect, protect and care about animals. Thus, all regulations should take into consideration the welfare of animals and their right to exist. Hence, introducing a general order to take all dogs for a walk on a leash or muzzled, regardless of their individual traits and situation can be inhumane in some cases. It was mentioned further that the leash and the muzzle are not enough. The owner should know the personality of the animal and be able to make it absolutely obedient. In this situation, standard precautions will suffice.

This view is important because the court relativizes the obligation determined in point 6, considering it dependent on individual circumstances. However, such individual circumstances are deemed, in the first place, the condition of the animal and not human welfare. Thus, the scope of this obligation will be determined by the condition of the animal and not by whether the hazard is real. It should be remembered that the purpose of this provision is to protect people not only against the hazard but also against the nuisance caused by animals and to prevent fouling of public areas. It is difficult to agree that safety is ensured if it can be achieved by means of normal rules of obedience of an animal to its owner. This view has no normative foundation. It was not mentioned that point 6 does not refer to dogs but to domestic animals which are treated equally by the lawmaker. It is difficult to speak about training a cat or other domestic animals. In addition, there is always a risk that an animal attacks somebody no matter how well trained and obedient it might be. There have been cases in which well behaving and obedient dogs attacked someone.

It is interesting that the lawmaker solves this conflict by imposing obligations on the owners of animals. It implies that if an animal has no owner, such protection generally does not exist. It was rightly assumed that the protection of people against animals can be effectively ensured only when the owner of the animal is obliged to ensure such protection. It is the owner who bears the responsibility and will be charged for not providing protection to other people.

This problem is even clearer in the case of another legal norm referring to this issue, namely, Article 431 of the Civil Code.[22] This provision reads: "Anyone who keeps or uses an animal is obliged to remedy any damage the animal causes irrespective of whether it was under his supervision, or had strayed or run away, unless neither he nor a person for whom he is responsible is at fault".

[21] II SA/Gd 406/20, CBOSA.

[22] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740).

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It is impossible to analyze this provision in more detail and depth, but the jurisprudence and literature output is significant, so it is sufficient to refer to the basic literature.[23]

CONCLUSION

To sum up, it should be indicated that the system of Polish law regulates both the protection of animals and the protection of humans from animals. Insofar as the first direction of regulations is strongly developed, popular, and fashionable and reflects the present-day trends in environmental protection law, the latter is not as popular.

Both directions of the regulations show signs of axiological conflict. In the case of protection of animals, they are treated as a protected good, referring to their suffering, ability to feel, having emotions, etc. These circumstances do not only opt for covering animals by legal protection. Some people are even tempted to postulate the need for recognizing animals as subjects.

However, the same animal that can suffer and feel and has emotions can pose a hazard to man – in certain extreme cases even a fatal one. Thus, animals are protected from humans, which is the right solution, but at the same time humans should be protected from animals. When exploring the issues of animal protection, it is worth remembering that such a second dimension exists.

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ABSTRAKT

W systemie prawa polskiego uregulowano zarówno kwestie ochrony zwierząt, jak i kwestie ochrony ludzi przed zwierzętami. O ile ten pierwszy kierunek regulacji jest mocno rozbudowany, popularny, modny i odzwierciedla współczesne tendencje w prawie ochrony środowiska, o tyle ten drugi już takim zainteresowaniem się nie cieszy. W obu tych kierunkach regulacji można dostrzec konflikty aksjologiczne. W przypadku ochrony zwierząt traktuje się je jako dobro chronione, z powołaniem się na ich cierpienie, umiejętność odczuwania, przeżywanie emocji itp. Te okoliczności nie tylko przekonują do objęcia zwierząt ochroną prawną, lecz także niektórych skłaniają do formułowania postulatu o upodmiotowieniu zwierząt. Jednak to samo zwierzę, które cierpi, odczuwa i przeżywa

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emocje, może stanowić zagrożenie dla człowieka, i to w niektórych skrajnych przypadkach wręcz śmiertelne. Zatem zwierzęta są chronione przed człowiekiem, co jest rozwiązaniem właściwym, ale człowiek też musi być chroniony przed nimi. Warto nie zapominać o tym drugim wymiarze, badając kwestie ochrony zwierząt.

Słowa kluczowe: ochrona zwierząt; ochrona przed zwierzętami; prawo ochrony środowiska; prawo polskie

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