

**SELECTED ASPECTS OF HUMANE ANIMAL
PROTECTION IN POLISH LAW**

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A b s t r a c t

The history of legal protection of animals in Poland dates back to the early 20th century. The legal solutions adopted at that time in the form of regulations of the President of the Republic of Poland and acts of the Parliament were in force for decades. The turn of the 20th century brought some dramatic changes in this regard. Parliamentary acts, both newly passed and amended, harmonised Polish law with European standards; many legal acts have been passed in Poland since 1 May 2004 which were adopted throughout the European Union. The most important legal act which protect animals against suffering inflicted by humans is the Animal Protection Act of 1997. The Act, amended many times, together with the law of 2015, which protects laboratory animals, laid the grounds for legal and administrative actions against people who violate its provisions. This law is amended in line with scientific findings regarding the feeling of pain by animals. This paper analyses the flaws in the current laws from a veterinary surgeon standpoint.

**WYBRANE ASPEKTY HUMANITARNEJ OCHRONY ZWIERZĄT
W PRAWODAWSTWIE POLSKIM**

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A b s t r a k t

Historia prawnej ochrony zwierząt w Polsce sięga początków XX w. Przyjęte wtedy normy prawne w postaci rozporządzeń Prezydenta RP i ustaw sejmowych obowiązywały przez dziesięciolecia. Przełom XX i XXI wieku przyniósł radykalne zmiany w tym zakresie. Nowelizowane i uchwalane na nowo ustawy dostosowywały polskie prawo do wymogów europejskich, a od 1 maja 2004 r. w Polsce przyjęto wprost wiele aktów prawnych uchwalonych dla całej Unii Europejskiej. Najważniejszym aktem prawnym chroniącym zwierzęta przed cierpieniem zadawanym przez człowieka jest ustawa z 1997 r. o ochronie zwierząt (Dz.U. z 21. 08., poz. 724). Ten wielokrotnie nowelizowany akt prawny wraz z ustawą z 15.01.2015 r. (Dz.U. 26. 02., poz. 266) chroniącą zwierzęta używane do doświadczeń stanowią podstawę do podejmowania działań prawnych i administracyjnych w stosunku do osób nieprzestrzegających przepisów prawa zawartych w tych aktach normatywnych. Prawo to zmieniane jest zgodnie z osiągnięciami nauki w zakresie odczuwania cierpienia przez zwierzęta. W artykule przeanalizowano wady aktualnego prawa z punktu widzenia lekarza weterynarii.

Introduction

People have been interested in animals since time immemorial. This has resulted in a growing body of knowledge about them. Scientific research into animals has revealed anatomical and physiological differences between humans and animals. Findings of studies carried out by ethologists, behaviourists, psychologists, neurobiologists and veterinarian have made it possible to accept that physical and mental suffering is felt by animals in a similar, if not the same, manner as by humans (ELWOOD 2011, ELWOOD et al. 2009, VIÑUELA-FERNÁNDEZ et al. 2007, KIELBOWICZ 2004). It has also been shown that the majority of painkillers used by people have the same effect on animals (ZIMMERMAN 1986). The findings of scientific research, together with growing public awareness, are reflected in legal acts on animal welfare that are increasingly often adopted by many countries and international organisations

(BABIŃSKA et al. 2007a, FELSMANN et al. 2014, LISTOS et al. 2015). In Poland, the issue is regulated in detail by the Animal Protection Act of 21 August 1997 (amended many times). According to its provisions, crimes against animals are penalised; moreover, certain administrative actions can be taken against animal owners and guardians (e.g. seizing an animal from its owner because of improper care). However, cases of cruelty against animals still happen (FELSMANN et al. 2016, RUDY 2011a,b, SZAREK 2005, LISTOS et al. 2015). This has resulted in an increase in the severity of penalties for violating the animal welfare act.

Despite constant changes in the Polish law regarding animal welfare, some people, especially veterinary surgeons, should analyse the effectiveness of the legal regulations in force (FELSMANN et al. 2015). This study is an attempt to analyse the current laws regulating the principles of humane animal welfare, considering the history and solutions applied elsewhere in the world in this regard.

International legal regulations

Increasing social awareness regarding the need to protect animals from suffering has resulted in changes in the law aimed at penalising crimes against animals (BABIŃSKA et al. 2007a,b, RADECKI 2003). In the late 20th century, a number of international organisations implemented a range of legal acts with continental and global reach, especially conventions regulating certain aspects of dealing with animals. The World Animal Rights Declaration of 1977, adopted by UNESCO on 15 October 1978 is a prime example of such measures. In Europe, animal protection conventions have been drawn by the European Council. Poland ratified the Convention for the Protection of Animals kept for Farming of 10 March 1976, and the Convention for the Protection of Animals for Slaughter of 10 May 1979 in 2008 (Journal of Laws 1976, item 190, Journal of Laws 1978, item 24, Journal of Laws 1991, item 112, Journal of Laws 1996 item 263, Journal of Laws 2003, item 17, Journal of Laws 2007, item 665, Journal of Laws 2008, item 810). Unified legal regulations on animal welfare are valid throughout the European Union and have been in force in Poland since 1 May 2004.

Historical background of animal protection in Poland

Protection of animals, including their habitats, has been provided for centuries.

Polish rulers implemented laws protecting certain game from the beginning of Polish history, but they did not do it for humane reasons.

Planned species protection, based on scientific grounds, was implemented in Poland after World War I. The main principles in this regard were laid down in the Nature Protection Act of 10 March 1934 (Journal of Laws 1934, item 274). Under the executive regulations for the Act, protection was provided for the pond turtle (from 1935) and the European bison (from 1938). Under the executive regulations to the act which is now in force (Nature Protection Act of 16 April 2004), about 750 animal species are covered by legal protection, with vertebrates accounting for 2/3 of the number (Journal of Laws 2004, item 880).

Implementation of the Regulation of President of the Republic of Poland on Animal Protection of 22 March 1928 (Journal of Laws 1928, item 332) is regarded as a genuine breakthrough in humane animal protection in Poland. This can be seen as progress even from a contemporary perspective. The Regulation contained twelve articles, but it remained in force for 69 years, until the Animal Protection Act of 21 August 1997 was enacted on 24 October 1997 (Journal of Laws 1997, item 724). This Act has been amended many times, and its current text differs significantly from the original version.

Contemporary animal protection in Poland

The principles of legal protection of animals have been laid down in many normative acts. All of them can be regarded as regulations on environmental protection (RADECKI 2003, RADECKI 2007).

The most general legal act which regulates animal protection is the Environmental Protection Act of 27 April 2001, whose Article 127 regards animal welfare as an element of environmental protection. Likewise, the Nature Protection Act of 16 April 2004 points to the need for protecting animals as an element of nature (Journal of Laws 2001, item 627, Journal of Laws 2004, item 880). Many other legal acts contain provisions on selected, specific elements of animal protection, including those that lay down the principles of administrative proceedings: The Inland Fisheries Act of 18 April 1985 (Journal of Laws 1985, item 91), The Act on the Profession of Veterinary Surgeon and on Veterinary Chambers of 21 December 1990 (Journal of Laws 1991, item 27), The Hunting Law Act of 13 October 1995 (Journal of Laws 1995, item 713), The Veterinary Inspection Act of 29 January 2004 (Journal of Laws 2004, item 287), The Act on Animal Health Protection and on Controlling Infectious Diseases in Animals of 11 March 2004 (Journal of Laws 2004, item

625), The Act on Breeding and Reproduction of Farm Animals of 29 June 2007 (Journal of Laws 2007, item 921), The Marine Fisheries Act of 19 December 2014 (Journal of Laws 2014, item 222).

Penal and administrative humane animal protection in view of the legal regulations in Poland

Humane protection of animals is a term which regulates the overall rules governing human attitudes towards animals. In its general principle, it includes protection for animals against human actions which may inflict pain and suffering. It has ethical and humane grounds, forbidding the causing of harm to animals, which are as able to feel pain as humans. Furthermore, legal protection of animals means that animals are looked after by specific institutions and legal entities. Legal regulations are necessary since everyone establishes the limits of protection subjectively and they can change them at any moment as they see fit, not always to the benefit of animals.

All considerations regarding legal, penal and administrative issues related to animal welfare must proceed by reviewing the Animal Protection Act of 21 August 1997 (Journal of Laws 1997, item 724). It regulates a range of important human actions towards animals and establishes penalties for offences or crimes violating its regulations. According to this Act, every animal is a living creature and, therefore, able to suffer. It cannot be regarded and treated as a thing; people must respect it and provide it with protection and care. Every animal must be treated humanely. With a view to implementation of the regulations on animal protection, public administration bodies act in collaboration with the Veterinary Inspection and the veterinary self-government. The latter act for the protection of animals, mainly vertebrates, by collaboration with the relevant institutions and organisations, both at home and abroad.

This law contains a number of definitions which are necessary to understand the legislators. The most frequently used include: humane treatment of animals – treatment in which an animal's needs are taken into account and which provides it with protection and care; grave negligence – this is understood as keeping animals in a state of starvation, dirt, untreated disease or in an improper room; cruel treatment – these are cases of animal abuse and other human actions which result in pathological changes in an animal's body or in its death; particular cruelty – this involves inflicting pain on an animal by a person in a slow and drastic manner, such actions are premeditated; overburdening of animals – forcing animals to make excessive physical effort, which is beyond the animal's physical capabilities; tethering – all mechanical devices which restrict an animal's movements and devices used by people to direct animal movements.

Killing animals and cruelty to animals

According to the law, killing animals is acceptable only in several specific cases. These include slaughtering for economic reasons (including fishing and hunting), killing animals which pose a threat to people or animals. It is noteworthy that a decision to kill an animal immediately must be taken by an authorised entity, mentioned in Art. 33.3 of the Act. It is significant that the animal's owner is not among such authorised entities.

Cruelty to animals denotes inflicting pain on them or making them suffer. A catalogue of actions which specify this include, *inter alia*, deliberate wounding or mutilating an animal as a result of branding by burning or freezing, each treatment which results in a change of an animal's appearance, whose aim is not to protect its health or life, e.g. clipping dogs' ears and tails. Draught animals must not be overburdened with loads or forced to run excessively fast, animals must not be frightened or teased maliciously, neglected, kept in improper living conditions or in place where they cannot maintain their natural body posture. Cruelty also denotes using sick or old animals for work or for sport or entertainment, forcing them to do things which could cause pain, hitting with hard and sharp objects, especially on the head, lower abdomen, lower parts of the limbs, organising animal fights, having sexual intercourse with animals, abandoning an animal, especially dogs or cats, carrying or moving animals in a way which causes unnecessary suffering and stress. Other forms of cruelty include using cruel methods in rearing or breeding animals, keeping animals without food or water for a longer period than allowed, performing surgeries by unauthorised persons, in a manner which can cause unnecessary pain. The Act provides penalties for an action which can be regarded as cruelty to animals.

Seizing an animal from its owner

In cases of real threats to an animal's health and/or life resulting from cruelty to it, it can be seized from its owner or guardian temporarily by the local administrative body responsible for the place where the animal lives. The animal is then transferred to one of the places suited to keeping various categories of animals: to an animal shelter in the case of pets or laboratory animals, to another farm in the case of farm animals, to a zoological garden in the case of animals used for entertainment, in film production or for sport. Such a decision is taken on the basis of information from the police, town security, a veterinary surgeon or a representative of a social institution whose aim is to provide protection to animals. An animal is transferred to a new place

upon a consent of the person who is to receive it. If such consent is denied, the animal can be handed over free of charge to another legal entity or an institution which will look after it properly. If remaining with the owner or guardian poses a direct threat to the animal's life or health, it can be seized immediately and the fact is reported to a local administrative body which issues a relevant decision. The cost of transport, maintenance and the necessary treatment of the animal is borne by its owner or guardian. Seizing an animal from its owner/guardian initiates legal proceedings against its owner and the animal can be returned if the case is dismissed.

Owners' obligations towards their pets

A person who keeps a pet is obliged to protect it against cold, excessive heat and atmospheric precipitation, to provide it with access to daylight, proper feed and access to water and to keep it in a place which enables it to change the body position freely. Pets cannot be held on a leash in a permanent manner for more than 12 hours a day or in a manner which causes bodily harm or which makes them suffer, without being able to make necessary movements. A leash cannot be shorter than 3 m.

Under the 2011 amendment of the animal protection act, pets cannot be traded or bought at fairs or markets. A dog or a cat can be bought only at a place of breeding, which must be registered with the relevant breeders' association (e.g. Polish Cynological Society, Polish Felinological Society, etc.) and only such breeding farms can reproduce animals for commercial purposes. An exception to this rule are entities which run animal shelters and organisations (such as the Polish National Animal Care Association), which are authorised to trade in dogs and cats outside the breeding sites.

Providing care to homeless animals is another issue which is regulated by provisions of the Animal Protection Act. Catching them and providing them with care is a task of communes, which must prepare a programme of care and prevention of animal homelessness every year (RUDY 2011a, b). Every commune in Poland must have an agreement with an animal shelter, to which it will transfer all the cats and dogs caught in its area, and with a veterinary surgeon in order to provide round-the-clock veterinary care in the case of road accidents with animals. Moreover, the programme provides for looking after stray cats, *inter alia* by feeding them and developing procedures for catching homeless animals. Reducing animal homelessness should include obligatory sterilisation and castration of animals which are brought to animal shelters, finding new owners for them and the possibility for putting down blind litters. Such a programme must also provide for procedures of handling homeless

farm animals, to which it must provide care in an agricultural farm. The cost of care provided to homeless animals is borne by the local commune.

The 2011 amendment of the Animal Protection Act introduced considerable changes concerning the procedure of handling pets which reside unattended in areas of hunting districts. Under previous regulations, hunters could shoot wild dogs and cats at a distance of 200 m from residential or farm buildings. The current act does not provide for such a solution, but it imposes an obligation on leaseholders or holders of hunting districts to take actions aimed at preventing wandering of dogs by instructing the owner to control the animal. Forest service personnel can catch an animal and return it to the owner; if this proves impossible, they must deliver it to an animal shelter.

Owners' obligations towards farm animals

An entity which keeps farm animals is obliged to provide care and proper living conditions for the animals, which cannot cause injury or harm or be a source of suffering. Animals must not be kept in an excessive density resulting from failure to suit the required surface area to the species, age or physiological conditions of the animals. Calves aged above 8 weeks should be kept loose and in groups, except at feeding time and for not longer than 1 hour at a time. For working animals, the conditions in which they are kept must not pose a threat to their life or health or be a source of suffering. It is unacceptable to overburden animals, use sick or undernourished ones, or use any objects to direct them which could mutilate them. Animals pulling a load must not be forced to trot or gallop. Only horses aged 5 years or more can be used for logging. Animals must have a species-specific time for a rest every day to regenerate. Detailed conditions of keeping farm animals, specifying such items as the area size and frequency of giving feed and water, are laid down in two executive regulations to the Act, namely, the Regulation of the Minister of Agriculture and Rural Development of 28 June 2010 on the minimal condition of maintaining farm animals other than those whose protection standards were laid down in the European Union regulations and the Regulation of the Minister of Agriculture and Rural Development of 15 February 2010 on the requirements and handling of farm animals whose protection conditions are laid down in European Union (Journal of Laws 2010, item 344, Journal of Laws 2010, item 778).

One of the latest amendments of the Animal Protection Act introduced regulations regarding the maintenance and handling of broiler chickens. These animals can be looked after by people trained in regulations concerning welfare

of broiler chickens or have qualifications in veterinary medicine, animal husbandry or agriculture.

Both for broiler chickens and the other farm animal species, the regulations obligate their owners to maintain the relevant documentation concerning breeding and veterinary treatment, which must be stored for 3 years and made available to representatives of the Veterinary Inspection.

Animals used for entertainment, movie production, sport and for special purposes

These animals include those subjected to special training. These are most frequently dogs used by police, customs services, border guards, used for looking for explosives, drugs or people. These also include service dogs and animals-actors. Conditions during performances and training and the methods of handling such animals cannot pose a threat to their lives or health, or cause pain; they should also be provided with veterinary care. The organiser of a show must prepare its scenario or programme, which it submits for acceptance to the Chief Veterinary Officer. Such shows or sports events cannot have elements of cruelty; particularly forbidden are bull, dog or cock fights. Animals can be kept, bred and presented for special purposes only in properly adapted stables, circuses or circus schools, supervised by the Veterinary Inspection.

Transport of animals

In regard to a procedure to be followed when transporting vertebrate animals, the Animal Protection Act refers one to the 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 (O.J. L 3, 5 January 2005). It designates the District Veterinary Officer to supervise and control the observing of the regulation in the territory of Poland. His tasks include, *inter alia*, supervising training for carriers and issuing licences to confirm qualifications for transporting animals.

Animal treatment

Veterinary treatment of animals is acceptable only to save their lives or health or to limit their population as part of homelessness prevention measures. They can only be performed by authorised persons – veterinary

surgeons. Each procedure must be carried out with caution, inflicting as little pain and stress on the animal as possible. Painful procedures are carried out with general or topical anaesthesia, except those that are carried out with no anaesthesia, according to the principles of veterinary treatment.

Slaughter, killing and reducing animal populations

Animals can be put down only in a humane manner, while inflicting as little physical and mental suffering as possible (FELSMANN et al. 2016, RUDY and RUDY 2010a). A decision to kill an animal to end its suffering can be taken by a veterinary surgeon, a member of the forest service, a game warden or a policeman. A animal can be kill by a veterinary surgeon by giving the animal an appropriate drug, or, for a wild animal, by a person authorised to use a firearm.

Slaughter animals can be killed after being rendered unconscious and only by a properly qualified person. This applies both to slaughter at a slaughterhouse and to on-farm slaughter (RUDY and RUDY 2010b).

Animals must not be killed in the presence, or with the participation of children. Further flaying of a carcass (e.g. skinning, scalding, etc.) cannot be done until respiratory and muscular reflexes stop. Moreover, with certain exceptions, killing pregnant females or females within 48 hours of delivery is forbidden.

Killing an animal can be done only with the consent of its owner. Environmental protection bodies (e.g. General or Regional Direction of the Environmental Protection Board) are authorised to give such consent for wildlife. However, if there is a suspicion or a threat of an infectious animal disease whose combating is obligatory, animals can be killed without such a consent (RUDY and RUDY 2011).

Supervision over observing the animal protection regulations

The Veterinary Inspection has been designated by the Act to supervise the observance of the animal welfare regulations; the Inspection can cooperate in this regard with NGOs involved in animal protection.

Penal regulations

Failure to observe the animal protection regulations is punishable under the law. The Act defines the type and degree of penalty for committing offences against its provisions. The unjustified killing of an animal or any form of cruelty to animals is punishable by fines, restriction of freedom or imprisonment for a period of up to 2 years, and up to 3 years if the criminal act was done with particular cruelty. Those found guilty of cruelty to animals can be forbidden to possess an animal for a period of up to 10 years. They can also be punished with a fine of up to PLN 10,000, which is used for a purpose associated with animal protection. Any actions aimed at harming an animal are forbidden. People must bear in mind animal welfare, protect it and treat it with proper respect.

The original, 1997 version of the Act, contained a number of provisions related to animal experiments. These provisions were transferred in 2005 to the Animal Experiments Act, amended in 2015. The valid Act on Protection of Animals Used for Scientific or Educational Purposes of 15 January 2015 contains a number of provisions which help to protect animals against unnecessary suffering when they are used in experiments or teaching demonstrations (FELSMANN et al. 2015). The current regulation provides for supervising animal experiments by the Veterinary Inspection, which is a step in the right direction. The Act still leaves the decision of whether to approve procedures with live animals in the hands of local ethics committees for animal experiments. It must be emphasised that such committees do not have to have a veterinary surgeon among its members. Moreover, personnel of the Veterinary Inspection cannot interfere even with the most drastic experimental procedures if they have been approved by an ethics committee. The Act provides for a punishment of up to three years' imprisonment (Art. 66) for its violation, as well as for administrative punishments in the form of fines of up to PLN 50,000 (Art. 70).

Conclusions

The Polish regulations concerning humane animal protection are constantly evolving. Despite certain flaws which are particularly visible to veterinary surgeons, they provide for ever improving and more effective animal protection against suffering inflicted by people.

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