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LEGAL PROTECTION OF PETS

PhD dissertation thesis

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I. The objective and structure of the thesis

The topic of my doctoral dissertation is animal protection in a narrower sense, paying special attention to the protection of dogs as “men’s best friends” as well as the legal regulation issues concerning them.

The main aim of the dissertation is animal protection and dog keeping related, detailed and analytic presentation of regulations and also proposals that could be used and adopted in the making and applying of legislation.

In its structural point of view the dissertation is divided into three major parts which are also further divided into chapters and subchapters.

The first part is for the theoretical foundation of the dissertation. In this part I study the concept and definition of animal protection, its connection to nature- and environmental protection as well as what we mean by protection. I also put the legal questions concerning the moral status of animals under the microscope for further examination. I do that in spite of the fact that I have no intention to approach the topic from a legal theoretical point of view.

However, I find it important to study also these questions as I believe that the theories on the status of animals have played a key factor in the growing of presently still active animal rights movements. Still in this part I write about how animal protection has developed. Animal protection and any activities concerning it are strongly connected to the evolution of the relationship between animals and people. During the domesticating process the keeping of domesticated animals would require some kind of activities for protection as the animals needed taking care of and properly looked after. This process of caring from the rudimentary to the level today has had a long journey, at the same time it is nowhere near its final state – as I try to describe it in my dissertation.

In the second major part of the dissertation, in addition to the analyzing of the general issues concerning animal protection, I review the structure of the participating organizations as well as study their duties and authority.

The current organizational system of animal protection is partly the result of the reforms taking place in the past few years in the administrative organizational structure. On the other hand, the amendments of the Animal Protection Act as well as the relating

legislatives also played a key factor. This is the primary reason so far for having such little literature concerning this matter. Therefore, in my work my primary source was the analyses of legislatives. That the current authorities practicing animal protection will effectively do their duties – the protection of animals – will be determined based on the study of the future enforcement practice. In my personal opinion, the alteration as well as the refining of the duties and authority is unavoidable in order to among many the eliminating of parallel authorities. One thing is for sure however, and it is that the overall reform of the organizational system dealing with animal protection has taken a stern impetus, which hopefully is an important step towards a modern and effective animal protection.

Also in the second part I study the applicable sanctions and responsibilities for the benefit for the animals.

In the third major part – which is also the largest in volume – I deal with questions concerning the keeping of dogs.

This final part contains the so called ‘de lege ferenda’ proposals relating to the problems raised in the dissertation. At the same time I find it important to mention that the suitable solutions I propose are detailed at the particular concerning issues, therefore, in the final part only the most important ones were highlighted in a summary.

When studying the structure it may be pointed out that the international perspective did not receive a separate part. The reason for that is that it seemed more logical and reviewable to connect it with the relevant national provisions and then draw the conclusions.

I certainly hope that I was able to provide useful and applicable proposals in my doctoral dissertation for both legislation and adaptations and also to contribute to encouraging scientific researches to deal with this matter more deeply and thoroughly.

II. The sources and method of research

The applied research method was compositional; the methods of research of the particular chapters were different as it was required by the themes themselves. Predominance can be experienced in the method of analysis at the effective national law material, among these with highlighting the updated processing of the Animal Protection Act. The method describing and analyzing the content elements of the current legislation were only used in an extent so that the theme of the dissertation could be processed and comprehended.

In my dissertation, besides the normative I also used the law comparative method.

My dissertation was based primarily on the Hungarian, Austrian and the German regulations on animal protection and in some exceptional cases the American and legislations used in New Zealand with the intention of focusing on how and whether they could be applied in the Hungarian legal system.

However, I came across difficulties in finding sufficient relating literature and also realized that only a small group of experts is dealing with analyzing the current regulations in operation. Nevertheless, I believe that this is the significance of my essay; I am in hopes of providing new results for the researches in the matter.

The sources were primarily based on legal norms, sources of law. In addition to the legislation I have also processed the relating constitutional court decisions, legal cases as well as the relating literature in law. However, I need to note on the literature used that besides Hungarian, English literature was primarily processed.

III. Propositions made during research

I believe it is indisputable that in the past few decades establishing legislations in animal protection has greatly advanced however, it can also be said that there are still regulating errors and deficiencies in the current legislation and its application on animal protection. This dissertation embarks to note, analyze and make ‘de lege ferenda’ proposals.

My concerns and critique on animal protection – within particularly the issue of dog keeping – as well as my proposals for the best solutions to the issues are exposed in details at the concerned issues, therefore they could be found throughout the dissertation. In this section I intend to highlight the summary of – to my belief - the most important issues.

1. Hungarian Animal Protection Act lists explicitly the animals that are imparted in protection. Examining the effect the question arises whether the act applies to other animals or only the ones that are listed. From the preamble and the aim of the Animal Protection Act we can conclude that it is not permissible to abuse even those animals that are not listed by the provision concerning the relevant effect of the Act. It is also signified by the legislature in the preamble that they recognize the indistinguishably essential value fauna and its species have for mankind. Furthermore, the Act as one of its aims defines the promoting of the protection of the individual species of fauna. All these concerned, in my opinion, it would be a more expedient solution if the effect of the legislation – as a principle – would apply to all animals since the Act itself was made in this mind. This is the practice applied in the Austrian, German and English animal protection acts, which could even set examples.
2. Nowadays, unfortunately we can often hear about hit-and-run cases involving animals. In many cases the animal does not get killed instantly but receives serious injuries and for hours or even days it is awaiting for Savior’s death in agony. Our effective legislations do not include regulation(s) for such incidents.

In cases like this or similar, the following provisions if taken into legislation would provide solution: “Anyone who endangers or causes injury to an animal is obliged to provide the animal with the necessary aid to the best of their knowledge or if it is not possible, then obliged to ensure first aid. Anyone who does not satisfy this obligation an animal welfare fine must be imposed on. There is foreign practice for ratification of the obligation for providing first aid, which could be a model in our country: the Austrian Animal Protection Act includes this matter among its general provisions.

3. The Animal Protection Act specifies the cases an animal’s life can be terminated. In my opinion from the ones mentioned in the Act terminations for the purpose of fur production is irreconcilable with the aim of the Animal Protection Act. I find it unreasonable and inexplicable that in the 21st century there are animals whose lives can be terminated for their fur in the purpose of producing luxury goods. In this aspect I find it reasonable to modify the Act in a way so that the termination for the reason of fur production is extracted from the listing of acceptable reasons or circumstances.
4. In examining the national regulations concerning animal fights it can be stated that legislative provisions widely expand in terms of the nature of the conduct. These are included partly in the Criminal Code and partly in the Animal Protection Act. As for me, it would be expedient to expand the scope of conducts in the Criminal Code with the attending as spectator as well as participating at animal fights. In this latter case, for instance, the doctor tending the injured animal at an animal fight could also be impeached.
5. Since 1998 Government Decree has provided provisions on animal protection fines. This legislation went through a comprehensive modification in 2012, which I write about in my dissertation. Prior to the modification the decree stated that the collected fine was the revenue of the imposing body and was to be spent on excess costs covering expenses concerning animal protection. The amount

received from animal protection fines must be handled separately and verifiably. After the modification however, the government decree does not include this provision anymore, which is wrong in my opinion. Presently the legislation does not include anything on the handling of animal protection fines. In practice on the one hand it means that it is possible that the collected fine gets out of hand of the imposing body, on the other hand, even if it stays within the body it does not necessarily mean that it is spent strictly on expenses concerning animal protection matters. In my standpoint, it should be clearly specified again that the fine stays within the imposing body and that it is obliged to spend it on expenses relating to animal protection. Thereby, there could be more financial source available for animal protection.

6. We can come across sanctions concerning animal protection in many branches of law. However, by focusing only on the Animal Protection Act we can state that there are many different obligations and sanctions provided throughout the Act for legal application. In my opinion, there should be a separate chapter for these provisions in the interest of making legal application more transparent.
7. Studying the sanctions of foreign animal protection legislations, we can see that nearly all legislations that I have examined deals with regulations on the confiscation of animals. In Hungary the Animal Protection Act does not include such sanctions. This, however, does not mean that confiscation procedures cannot take place. As it can be read in the dissertation in details, in the administrative procedure of the animal protection authority, applying the relevant regulations of the Administrative Procedure Act, can instruct about the animal's confiscation. Nevertheless, in my view, following the international examples it would be worth considering this sanction to be included in the Animal Protection Act in the interest of the animal in question. I am including my propositions in details concerning this issue in my dissertation.

8. The Animal Protection Act specifies obligations for teaching and advancing animal protection studies to bodies of government and local governments as well as educational institutions, but the obligation does not include details in regulations. However, in practice this education of animal protection is not at all or very little realized. In my opinion, the propagation of the concept of animal protection should be primarily started on the level of the future generation, the children. In the interest of realization it would be necessary in my opinion to include responsible animal keeping in the National Curriculum as well as the frame curriculum as these two documents include the unity of public education content. Furthermore, other civil organizations dealing with animal protection should also be involved in teaching responsible animal keeping as these organizations are intended to represent the proper attitude towards animals. As long as the National Curriculum does not include the theme of responsible animal keeping, I suggest that the educational institutions in their own authority make agreements with civil organizations which in their object of activity include the organizing and supervising of education on responsible animal keeping. As the details of regulation concerning the obligation on responsible animal keeping have not been developed for the institutions this solution would not create unlawful circumstances.
9. In the past few years a heated debate among dog owners was followed by the amendment of an animal protection legislation according to which a microchip implantation is mandatory for each dog older than four months. The microchip implantation and its registration are by the legislation the duty of a veterinarian. In my opinion, it would be a more proactive solution if the owners themselves could register their animals in the database as well. In reality it can often be experienced that when a stray animal is found on the street it either has no microchip implanted or even if it has the animal is not registered in the database as the veterinarian has failed to do so. As for me, if the owners were legally authorized to do the registration themselves, the number of unregistered animals would decrease considerably and also there would be less administration burden

on the veterinarians. Therefore, in my view, the most suitable solution to the problem would be if the owner at the time of the microchip implantation at the veterinarian's office could declare whether they will do the registration or not. In case the owner intends to do it so then the veterinarian is obliged to provide them with a form including the necessary details and information. In case the owner chooses not to do the registration then it would stay as the veterinarian's obligation.

10. According to the provisions of the Animal Protection Act the local government according to the location of the animal is responsible to make statistical listing at least once every three years, the purpose of which besides disease control against rabies and the effective implementing of animal protection and dog police enforcement duties is the protection of dog owners and other individuals' rights and properties. According to the Act there could be a survey for listing carried out every year, however, in practice, most local governments only fulfill this obligation once every three years. Could we be talking about effective implementation of these objectives if the statistic survey listing is done only every three years? The Act currently does not oblige the owners to report any changes in details. However, in the life of both animal and owner there could be several changes within three years, such as moving house or the animals could change owners. In my opinion it would be a better solution if a survey for statistics were done more frequently, for instance once a year. Furthermore, if the Act would oblige the owner to report any changes that might occur even if it undoubtedly means extra administration for both owner and the determining authority. In my opinion the New Zealand example which I introduce in my dissertation in details in this regard could be also an example for Hungarian legislation.

11. In the third part of my dissertation in the II. Chapter in details I examine the national and international regulations concerning dangerous dogs. Similarly to international regulating, in Hungary before the year 2010 pit bull terriers and

their mutts qualify as dangerous dogs, in other words a dog would qualify as dangerous based on its breed specification. In 2010 the Constitutional Court abolished this provision and as a result regulations concerning dangerous dogs were modified in a rather welcomed way in my opinion. Namely, since 2010 a dangerous dog is a particular single one that is qualified as by the authority, so qualifying by breed based listing was eliminated. I believe that only a single species itself should be separately at all times under examination while in the process of qualifying, a breed of dog as a whole– whichever it might be – should never be under examination. Personally, I do not agree with breed specified qualifying – as I have expressed it in details in my work. In my opinion the Hungarian legislation, in which the dogs are exclusively qualified as dangerous by their particular behavior, inevitably progressive.

12. Animal protection legislations in case of qualified dangerous dogs specify that such dogs be kept solely neutered. Among dog owners the issue of neutering is just as tough of a debate as the issue of mandatory microchipping or the question of keeping dogs on a chain. In 2009 the Hungarian Chamber of Veterinary Surgeons Professional, Training and Education Committee released their position on the issue of neutering, in which they provide professionally based responses to misbeliefs circulating in practice, such as that it is unnecessary for dogs in their lives to mate once before being neutered as well as it is not necessary for female dogs to have puppies at least once, furthermore, their position also reads about the effects of neutering before and after the animal reaching maturity. In my opinion however, the neutering should be also extended to pets that are not kept in the intention of breeding. I believe that the number of dogs kept in shelters and flaying houses as well as stray dogs on the streets would decrease with this solution in long term perspective.

13. The Animal Protection Act gives authorization to the Government for the detailed regulating of the duties concerning the matter of capturing, ownership and placing of stray dogs in a certain administrative area. Nevertheless, the

detailed regulations have not been developed so far although it would be inevitably justified in my view. The current practice is that the local governments arrange agreements with different organizations – perhaps a natural person – to carry out flayer's and dog police enforcement duties. Duties concerning capturing the animals, tending, keeping as well as redeeming them and so on are included mainly in the internal regulations of the relevant organization, but in different ways not in legislation. In order to settle the issue I find regulations on government decree level considerable as in this case the same regulations would apply to all flaying houses and as a result they would have the same obligations. This way the currently in practice unfortunate scenario that each local government and site has different duties for the flayers would be ceased. I would like to emphasize again that to do so the Animal Protection Act already authorized the Government in 1998 so the supplement of the legislative failure would be timely.

All in all it can be stated that both in dog keeping and several fields of animal protection there have been significant improvement in the past few years. However, in the future further legislation, restrictions as well as effective enforcement of legislation are needed considering the problems and shortcomings arising in practice.

IV. Expedience of research results

Expedience of the results contained in the dissertation is possible widely. One of the best fields of expedience of proposals is legislation. The amendment of animal protection legislation is presently in progress even at the time of the dissertation. The aspects of the dissertation are the animal protection legislation, primarily a possible supportive help in the considering of reform of the Animal Protection Act.

Another field where the results could be useful is education. This could be possible in the traditional law education. In the field of law cases concerning animal protection are on the rise, in fact future teachers might come across the need for teaching responsible animal keeping on an every day basis. Furthermore, teaching about animal protection based approach is an obligation by law for all educational institutions.

In Hungary there are only few literary sources that devote attention to issues concerning animal protection therefore this dissertation intends to narrow this gap. Publications that have been published and include component results of the dissertation provide the expedience of the research results in academic life.

V. Own publications relating to the theme of the dissertation

Az állatvédelem jogi szabályozásának története hazánkban

Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar Szekciókiadványa, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, Miskolc, 2012. 81-86.

Ebtartással kapcsolatos jogi problémák a közigazgatásban

„Nemzedékek együttműködése a tudományban” című nemzetközi tudományos PhD. – konferencia előadásai Elektronikus könyv Történelem – Politika – Jogtudomány szekció II., Budapest, 2012. 153-157.

A „veszélyes eb” fogalmának változásai (a magyar jogban)

Miskolci Doktoranduszok Jogtudományi Tanulmányai 12., Gazdász-Elasztik Kft., Miskolc, 2013. 135-155.

Szankciók az állatvédelmi törvényben

„Tudományos próbapálya” c. konferencia Elektronikus Könyv, Professzorok az Európai Magyarországi Egyesület, Budapest, 2013. 112-124.

„Ebadó” és ebösszeírás

Publicationes Universitatis Miskolcensis Sectio Juridica et Politica Tomus XXXI, Miskolc University Press, 2013, 207-220.

The principles of animal protection

Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar Szekciókiadványa, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, Miskolc, 2013. 123-127.

Az önkormányzati rendeletek bírói kontrollja az állattartási rendeletek példáján

Miskolci Jogi Szemle, 2013. évi (8. évf.) 1. szám, 5-17.

Az állatvédelemben részt vevő szervek

Miskolci Doktoranduszok Jogtudományi Tanulmányai 13., Gazdász-Elasztik Kft., Miskolc, 2014. 111-139.

Miért nincs állatvédelmi oktatás?

Jog és Állam 19. szám, IX. Jogász Doktoranduszok Országos Szakmai Találkozója, Budapest, 2014. 38-44.

A társállatok jogi védelme

„Jogalkotás és jogalkalmazás a XXI. század Európájában”, Doktoranduszok Országos Szövetségének Jogtudományi Osztálya, Budapest-Debrecen, 2014. 106-117.

A szabálysértési jog változásai, különös tekintettel a veszélyeztetés kutyával szabálysértési tényállásra

„Hiteles(ebb) tudományos prezentációk” című VIII. PhD konferencia előadásai II. kötet, elektronikus könyv, Budapest, 2014, 68-74.

A Magyar Állatorvosi Kamara szervezeti felépítése

microCAD Nemzetközi Multidiszciplináris Tudományos Konferencia, Miskolc, 2014. 1-8.

The Changing of Definition on „Dangerous Dogs” (in Hungarian Law)

microCAD Nemzetközi Multidiszciplináris Tudományos Konferencia, Miskolc, 2014. 1-6.

Állattartás és birtokvédelem a régi és az új Ptk. tükrében

Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica Tomus XXXII, Miskolc University Press, 2014, 411-423.

Állatvédelem az állatkísérletek területén?

De iurisprudentia et iure publico, Jog- és politikaitudományi folyóirat, 2014. évi (VIII. évf.) 2. szám, Magyar Jog- és Államtudományi Társaság, 1-12.

Első lépések a brit állatvédelmi jogban

Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar Szekciókiadványa, Miskolci Egyetem, Miskolc, 2014. 139-142.

A társállatokkal kapcsolatos rendelkezések a büntetőjogban

Miskolci Doktoranduszok Jogtudományi Tanulmányai 14., Gazdász Elasztik Kft, Miskolc, 2014. 159-177.

About Animal Protection In Education

XXIX. microCAD International Multidisciplinary Scientific Conference, University of Miskolc, 2015. 1-9.

Állatmenhely kontra gyepmesteri telep – Merre tovább?

XXIX. microCAD International Multidisciplinary Scientific Conference, University of Miskolc, 2015. 1-8.