

# The Administrative Law Animal Protection Model – Basic Assumptions of Research Project\*

## 1. On the need of conducting research

In recent years, increased interest of the society, media and scientific community in the legal protection of animals can be noticed. However, the attention of the researchers is focused on civil law and criminal law matters, and hence there is a need to undertake more comprehensive, systematic analysis of the administrative law aspects of this issue. Also, numerous divergences of interpretation that appear both in the doctrine and the administrative jurisprudence regarding very basic legal institutions for the protection of animals argue in favour of such necessity. Additional motivation stems from subsequent audit reports issued by the Supreme Audit Office (later referred to as NIK) and the pleas of social organizations dealing with the protection of animals, which indicate the need for immediate improvement of the state of the animal protection in Poland. It is enough to mention that according to the information on the results of the audit completed by the NIK on the tasks of animal protection that are to be performed by communes (ev. no. 46/2013/P12/193/LBI) according

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\* The publication was prepared within the research entitled “The Administrative Law Animal Protection Model” included in the application registered in the Funding Stream Service system administered by National Information Processing Institute after number 2016/23/D/HS5/01820 and accepted for financing within the competition announced by the National Science Centre, Poland – “SONATA 12” on the basis of the decision made by the Director of National Science Centre in Krakow of the 16 of May 2017 (decision no. DEC-2016/23/D/HS5/01820, contract no. UMO-2016/23/D/HS5/01820).

to which: more than 60% of communes, in which stray animals were caught did not provide places for them in animal shelters; 60% of communes ordered the catching of animals to entities that did not have all the permits required by the law; 80% of all the money theoretically earmarked for the care over the animals in fact went to companies catching stray animals; 30% of the money for the care over the animals has been spent illegally; half of the sampled communes did not verify what happened to the caught, captured homeless animals; in the contracts with dog-catchers and animal shelters 60% of communes did not put forth any requirements regarding the standards of the animal care; 80% of communes did not request from the shelters to keep record of fostered animals, which eased – to say the least – unreliable care; more than 80% of the shelters did not provide the right conditions for animals taken in – mainly due to overcrowding; in some cases, part of the caught animals were placed in institutions not covered by veterinary supervision, etc. The scale of the irregularities detected by the NIK, only in that one area, i.e. ensuring by the communes care over stray animals and preventing their homelessness, demonstrates that at least part of the laws in force in this respect is ineffective. The results of the preliminary investigation, allow to formulate the hypothesis that the same is true in the other areas of the administrative law regulations concerning animal protection. Therefore, the ongoing research will cover such issues as: current legal status of animals; communal programs of care over stray animals and preventing animal homelessness; temporary retaking of abused animals from their owners; breeding and placing on the market of pet animals; legal conditions for the use of animals for entertainment, shows, movies, sports and special purposes; protection of free-living animals; legal requirements for the transport of animals; legal aspects of experiments on animals; acceptability of ritual slaughter in Poland; systemic status and competence of public administration authorities in the field of animal protection; legal framework considering the actions of social organizations for the animal protection. The main aim of the research is to conduct multidimensional analysis and critical evaluation of the most important institutions of the administrative law protection of animals and solutions postulated in this field. The basic interpretative directive is determined by the Article 1, paragraph 1 of the Act of 21 August 1997 on the Protection of Animals (i.e. Dz.U. 2013 item 856 as amended), which states that an animal as a living being capable of suffering is not a thing, and a man owes him respect, protection and care. In principle, the undertaken studies will allow to present the public-law aspects of animal protection, and, above all, their axiological and systematic foundations, the EU and international legal considerations, as

well as selected – reflected in the current legislation – national strategies and policies aiming at their implementation. As the result, it will contribute to the development of the study of the administrative law, and indirectly also other scientific disciplines. It will raise public awareness in the field of administrative law aspects of the animal protection.

## 2. Research project objective

Along with the development of civilization the way of human's life and his attitude towards animals changes. Today we may talk about some kind of paradox, which reflects in hugely differing conditions of treating domestic animals, homeless animals, livestock, laboratory animals, animals used for specific purposes and, in the end, free-living animals. This is also reflected in a legal system, which on the one hand, carries out dereification and abolishes the cruel treatment of animals, and on the other hand, it allows to slaughter the animals with a use of a specific method, required by a religious rite. Described situation determines undertaking the research whose main goal is to conduct an in-depth and multidimensional analysis of administrative law, which identifies the standards of humane protection of particular categories of animals in Poland. The assumption is that conducting the analysis will allow to establish whether it is possible in this case to talk about the systemic solutions; and if so – what are their grounds, as far as it is consistent and to what extent it has regard to the requirements of international law and EU law.

The main aim of the research is the analysis, description and evaluation of the administrative law model of humanitarian protection of animals (i.e. protection motivated by ethical considerations, other than economic ones). The obtained results will, thus, allow to formulate proposals for optimization in the field of administrative law protection of an animal perceived as a particular biological entity (living and being capable of suffering), an essential component of the natural heritage of humanity and an asset. This evaluation will be conducted primarily in terms of the compatibility of the regulations in question with the standards of higher order (including European Union law) and their validity and effectiveness. The determinations made in this regard will allow to verify the general hypothesis that the model of the administrative law protection of animals that is currently in force, which is both the consequence and

the manifestation of the evolution of civilization, requires fundamental amendments in many areas to allow further progress of this development and, consequently, improvement of the animal welfare as well as the quality of human life. This will definitely require a check of many other specific scientific hypothesis related to all stages of legislation and application of this particular branch of law. Selected specific hypotheses: 1) A part of legal solutions introduced to a Polish legal system in relation to the need of EU law implementation, also those expecting the “upgraded” standards of animal protection, is conflict with constitutional norms, not in conformity to social conditions, and prevented from enforcing, so that it can only be veneered in nature. 2) The main reason for distinction in the level of legal protection the specific categories of animals is a political clientelism, which manifests itself i.a. in the protection of an economic interest of selected businesses and occupational groups, as well as in being prepared to recognize the religious minority right to a behavior which are in odds with the universal norms, which arose as the outcome of moral development of human beings. 3) The content of the law applying decision in the field of animal protection is determined by legal norms as well as by the non-legal issues (economical, political, social). The wider the scope of public administration organs’ discretionary power is, the bigger influence on the whole process and the content of final decision of the non-legal issues.

### 3. Significance of the project

The need of undertaking the research on administrative law model of animal protection is determined not only by the multiplicity of the current regulations, its numerous deficiencies and evident gaps in scientific knowledge, but first of all the consciousness of moral obligations of man towards animals. In other words, undertaking such an issue is reasonable not only because of the severity of the legal problems, but also because the humane animal protection is one of the most important axiological dilemmas of the present. Moreover, the development of science in this field will contribute to improvement of the development of civilization indicators’, in both the material and awareness dimension.

In the literature of the subject there is no study which would review the administrative law model of humane animal protection in a complex way. It

does not mean that this issue has not been undertaken by the representatives of the administrative law doctrine. The thing is that the subjects of their argumentation are limited to particular issues. Moreover, most of the published works are based on the outdated and invalid legal grounds. Therefore, there is a necessity of conducting multidimensional considerations which would allow to verify the details concerning the administrative law model of humane animal protection that are known at this time; and first of all will allow to draw the general conclusions concerning quality of the adequate administrative law norms on the animal protection.

Completion of the planned research will contribute to the forming of optimal administrative law model for the protection of animals and the development of the study of administrative law. Furthermore, indirectly it will also affect the development of other scientific disciplines, such as, for instance, biomedical sciences, whose progress is largely shaped by the feasibility of using animals in experiments designed to verify hypotheses relevant in achieving cognitive and applicative objectives in the field of medicine, pharmacy, veterinary medicine, and many other biological sciences. Even the mere fact of dissemination of the results (in the form of scientific articles, scientific monographs, speeches at conferences, and popular science publications) will raise the level of social awareness of the legal protection of animals, which is one of the conditions for further progress of the civilization.

#### 4. The idea and plan of research

The subject project involves implementing innovative research of primary nature, whose aim is to expand the knowledge about the administrative law model of humanitarian animal protection in Poland. The primary objective of the project is to analyse the provisions of the administrative law regulating the standards of humanitarian protection of certain categories of animals. The assumption is made that the completion of the analysis will allow to determine whether it is justified in this case to refer to the solutions as systematic ones and, if so, on what foundations they are based, how consistent the system is, and to what extent it conforms to the requirements of international and the EU laws and regulations. The determinations made in this regard will contribute to the development of the science of the administrative law, and, indirectly,

also of other scientific disciplines. The results of the preliminary study published in the scientific article (E. Kruk, *Czasowe odebranie maltretowanego zwierzęcia w świetle ustaleń judykatury i doktryny prawa – wybrane problemy* (Eng. *The temporary removal of abused animal in the light of the findings of jurisprudence and the legal doctrine – selected problems*) [in:] *Prawne instrumenty ochrony środowiska* (Eng. *Legal instruments for environmental protection*), eds. B. Jeżyńska, E. Kruk, Lublin 2016, pp. 47–84), as well as those yet not published, and primarily concerning the communal programs of care over stray animals and preventing animal homelessness, indicate not only the desirability of the research postulates presented in the proposal, but also indicate the validity of the adopted in it assumption that the currently existing administrative law model of animal protection requires fundamental amendments in many areas to allow further progress of the development of civilization and, consequently, improvement of the animal welfare as well as the quality of human life. The task set by the persons undertaking this project is to carry out a comprehensive research process involving multi-dimensional analysis of the solutions in the field of administrative law of animal protection, assessment of the analysed solutions, and formulation of generalizing conclusions and proposals of their optimization. The specific objectives of the project relate to the key – from the perspective of system analysis requirements – humanitarian aspects of the protection of animals of different designation under administrative law.

Particular goals:

- setting the appropriate moral, customary and social norms as the source of extrasystemic referral concerning legal protection of the animals;
- setting the genesis and the present tendencies of development in the area of legal protection of animals;
- presenting the substantive assessment of the current legal status of animals in Poland, considering the results of the comparative legal analysis;
- setting the structure of the source of law system in reference to animal protection law;
- distinction of legal administrative animal protection principles;
- setting the hierarchical (considering competences) and contentual ties which are the subject of legal norms as a part of a legal administrative animal protection;
- setting the formal properties of the system of legal administrative animal protection (problems of consistency and completion);
- the assessment of effectiveness of chosen legal administrative animal protection institutions;

- setting the social circumstances of effectiveness of legal administrative animal protection;
- setting the address of service of public administration organs in cases of humane animal protection;
- setting the legal forms of activity of administration in cases of humane animal protection;
- setting the legal interest and the procedural position of social organizations whose statutory goal is the animal protection.

## 5. Research methodology

The above mentioned research project presumes conducting an innovative scientific research of a basic character, whose goal will be to broaden the knowledge of the administrative law model of humane animal protection. The implementation of this objective requires conducting an in-depth systemic analysis and using the interdisciplinary approach. It will also be necessary to define an effective paradigm in this matter, and adopt a quality criteria for analysed legal rules. The conducted research is targeted at acquisition of new scientific knowledge. The goal will be achieved by theorizing (deductive and inductive reasoning), verification and falsification of issues hypothesized, substantiating the assertions and creating scientific theories in the respect of administrative law-based animal protection.

All planned basic research will involve all the dominant methodology widely used in legal research, i.e. the dogmatic method, the historical method and the comparative method, and will consist in the analysis of the currently applicable regulations and the achievements to the date of the jurisprudence and the legal doctrine of the administrative law concerning animal protection. When it comes to the mentioned above order of addressing particular issues, the assumption is that it will be determined by the logical sequence of formulated thesis and the need to ensure an appropriate explicatory value of the obtained results (including the avoidance of unnecessary repetitions), and not the formal layout of the analysed legal act or the course of action of the administrative procedure. The determinations made in this way will render the chance for formulation generalizing theorems using deductive reasoning. Ontological complexity of the administrative law and a fact that the animal protection issues

would be impossible to conclude only with the law theory and legal dogmatics, in the course of research the scientific expertise of different disciplines (such as economy, sociology, psychology, philosophy, ethics, behavioral ecology) will be used adequately and to the extent which is necessary. As to the comparative law analysis, taking in consideration its specifics, the complexity of such studies and the need of providing the suitable degree of the research, it was considered essential to narrow the choice to a single reference model. In this respect, the provided subject of research will be the Republic of Estonia's legal system, clearly solely considering the animal protection area, in particular the regulations transposing EU directives. The results of conducted comparative law analysis will serve as the reference point and the additional criteria of the domestic regulations evaluation, as well as the baseline on a drawing optimization proposals stage.

The choice of reference system was driven by i.a. a fact, that Estonia fulfills the requirements of swift and timely transposition of EU law in exemplary way (also in the field of environmental protection in a broad context), it has been confirmed in the European Commission report on respecting the EU law by the Member States. On this occasion it needs to be emphasized, that not only EU as the organization has been determining the development of Estonian pro-ecological legislature. The great role in this matter plays the support of Denmark, Norway and Sweden, whose legal solutions has been a model of pro-ecological actions for decades – it makes the comparative research even more interesting. Not without significance, in a process of choice making, was also the fact that nature is deeply rooted in Estonian culture, and eco-innovations and “green” social initiatives such as the “Teme ära” project (worldwide known as “Let's do it” project) became a showcase of this country.

The subject and goal of conducted scientific research oblige first of all to establish the meaning of domestic, European and international legal regulations setting up the standards of administrative animal protection. It requires using different types of interpretation and legal deductions, namely conducting a series of intellectual actions targeted on recognition and assessment of analysed subject. The results obtained will allow to formulate general rules regarding the administrative animal protection, which gives the possibility to verify the assumed hypothesis. It is worth mentioning that because of unrestrained inclination for the administrative law doctrine to create new definitions and the awareness of discrepancies and problems with interpretation, one of the main methodological presuppositions in the course of research is to follow the rule *entia non sunt multiplicanda praeter necessitatem*. For the need of conducted



research, the suitable legal material, administrative case-law, jurisdiction of administrative courts, of the Supreme Court, of the Constitutional Tribunal and of the European Court of Justice, as well as the current acquisition of legal and other sciences will all be used.