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The Cooperation of Polish Social Organisations with the Competent State and Self-Government Institutions in the Detection and Prosecution of Crimes and Petty Offences Specified in the Animal Protection Act^{*}

Social organisations play an extremely important role in the process of humanitarian animal protection. In a sense, this is reflected in the provisions of the Act of 21 August 1997 on the Protection of Animals¹ (hereinafter referred to as APA) in which the legislature requires public authorities to cooperate in this respect with the relevant national and international institutions and organisations, including those whose statutory aim is the protection of animals (Art. 1(3) and Art. 3 of APA). This

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¹ Consolidated text, Journal of Laws of 2019, item 122.

concerns in particular such matters as: the temporary seizure of a maltreated animal and enforcement of the court's ruling on the forfeiture of an animal (Art. 7(1a) Art. 7(3) and Art. 38 of APA);² running shelters for animals (Art. 11(4) of APA); district (*gmina* level) programmes for the care of homeless animals and the prevention of their homelessness (Art. 11a(7)(2) of APA); action aimed at limiting the population of animals constituting an extraordinary threat to life, health or human economy (Art. 33a(2) of APA); the supervision over the observance of regulations on the protection of animals (Art. 34a(3) of APA).

Such social organisations were also authorised to: determine the necessity of an immediate killing of an animal in order to put an end to its suffering (Art. 33(3) of APA);³ exercising the victim's right in criminal proceedings⁴ in proceedings in petty offence cases and in proceedings in cases of juveniles, the subject matter of which are the acts specified in APA (Art. 39 of APA); as well as to cooperate with relevant state and local government institutions in the detection and prosecution of crimes and petty offences specified in APA (Art. 40 of APA). Unfortunately, the normative value of these provisions and the scale of their practical application are small.⁵ This is best illustrated by the above-mentioned possibility of cooperation in the area of detection and prosecution of crimes and offences. This leads to a situation in which social organisations themselves often propose that the regulations they are the addressees of should be removed from APA; the regulations which in their opinion, due to their generality and anachronism, lead only to dilution of the responsibility for the fate of animals.

² For more on this subject, see, e.g. M. Goettel, „Czasowe odebranie” oraz „przepadek” jako szczególne środki prawnej ochrony zwierząt, „Studia Prawnoustrojowe” 2011, Nr 13, pp. 135–147.

³ The right of an inspector of a social organisation whose statutory aim is to protect animals, provided for in Art. 33(3) of APA, to determine the need for immediate killing of an animal in order to put an end to its suffering, is questioned in some opinions. They point out that this provision gives the possibility to decide to kill an animal to persons who “do not have adequate knowledge concerning the available options to provide assistance other than euthanasia”, which, according to the authors of these opinions, should be reserved to the exclusive prerogative of veterinary surgeons. See, e.g. *Opinia Krajowej Izby Lekarsko-Weterynaryjnej (KILW/03210/02A/11) dotycząca poselskiego projektu ustawy o zmianie ustawy o ochronie zwierząt oraz ustawy o utrzymaniu czystości i porządku w gminach (druk nr 4257)*, Warszawa, 17 czerwiec 2011, www.sejm.gov.pl [access: 05.05.2019].

⁴ For more on this subject, see, e.g. A. Choromańska, *Status pokrzywdzonego w sprawach o przestępstwo znęcania się nad zwierzętami. Uwagi na tle wyroku Sądu Najwyższego z 16 stycznia 2014 r. (VKK 370/13)*, [in:] *Przeciwdziałanie międzynarodowej przestępczości przeciwko środowisku naturalnemu z perspektywy organów ścigania*, red. W. Pływaczewski, A. Nowak, M. Porwisz, Szczytno 2017, pp. 197–206; M. Porwisz, *Udział w postępowaniu karnym organizacji społecznych działających na rzecz ochrony zwierząt*, [in:] *Przeciwdziałanie...*, pp. 207–224.

⁵ Łukasz Smaga expresses a similar view: “In the context of legally sanctioned humanitarian protection of animals, social organizations, in accordance with the will of the legislator, play a relatively marginal role, and regulations concerning their activities are characterised by a far-reaching randomness. It seems that the legislator, without any concept of shaping the position of the social factor, only to preserve the appearance of social control, assigned specific competences to these organisations”. See *idem, Ochrona humanitarna zwierząt*, Białystok 2010, p. 270.

For example, in the explanatory memorandum to the “Concept of changes in animal protection law” published by the Animal Protection Office of the ARGOS Foundation for Animals, we can read: “The Act [on the protection of animals – E.K.] in many places refers directly to social organisations with the statutory objective of animal protection, both in general provisions on cooperation with state authorities with such organisations and indicating their specific roles. However, no provision on the cooperation is formulated in a manner that would make it binding for state bodies or the organisations in question, and the special role of such organisations is established in particular where it is necessary to replace the responsibility of public authorities for the fate of animals. The effect of such provisions is general helplessness and the lack of influence of social organisations on the state of animal protection, except the extent to which they act as entrepreneurs in the sector of cleaning and waste management, conducting agreements with *gmina* authorities”.⁶ Significantly, it should be borne in mind that the level of cooperation between society and state institutions is a measure of democracy in a given society and a distinctive feature of civil society.

It is worth mentioning here that the first Polish legal act providing for the humanitarian protection of animals, which was the Ordinance of the President of the Republic of Poland of 22 March 1928 on the Protection of Animals,⁷ provided in Art. 10 for the possibility that the Ministers of Justice and Internal Affairs, by way of ordinance, may authorise individual societies and organisations aimed at the protection of animals or their breeding or supporting their breeding, as well as hunting societies to cooperate with state authorities in the disclosure of crimes provided for in the Ordinance. Associations and organisations authorised in such a way were also granted the right to support prosecution in courts as an auxiliary prosecutor.

The first such ordinance was issued on 27 December 1930.⁸ On its basis, the Society for the Care of Animals in Warsaw, the Polish League of Friends of Animals in Warsaw, the Łódź Society for the Care of Animals, the Society for the Care of Animals in Poznań, the Kraków Society for the Protection of Animals and Nature, the Association for the Care of Animals in Kraków, the Society for the Care of Animals in Lviv, the Voivodeship Society for the Protection of Animals in Stanisławów, the Vilnius Society for the Care of Animals, the Society for the Care of Animals in Częstochowa and provincial branches of these societies were authorised to cooperate with state

⁶ The ARGOS Foundation for Animals, ul. Garncarska 37A, 04-886 Warszawa, KRS [National Court Register]: 0000286138. See *Koncepcja zmian prawa ochrony zwierząt*, <http://www.boz.org.pl/fz/prawo/k.htm#k5c> [access: 05.05.2019].

⁷ Consolidated text, Journal of Laws of 1932, No. 42, item 417.

⁸ The Ordinance of the Minister of the Interior in agreement with the Minister of Justice of 27 December 1930 on authorising certain associations to cooperate with state authorities in revealing crimes against animal protection, Journal of Laws of 1931, No. 3, item 17. This Ordinance came into force on 23 January 1931 and was repealed on 5 August 1957.

authorities in the disclosure of crimes provided for in the Ordinance of the President of the Republic of Poland of 22 March 1928 on the Protection of Animals.

Such cooperation included: a) participation in Police investigations, namely: attendance at investigation activities; asking questions to the examined persons with the consent of the investigator; putting forward conclusions, which the investigator was obliged to take into account as far as possible; b) independent investigations as a substitute for the Police in cases where the Police have not yet started an investigation or have transferred the investigation to the association.

Pursuant to Art. 243 of the Ordinance of the President of the Republic of Poland: the Code of Penal Procedure of 19 March 1928,⁹ the aim of such an investigation was to clarify whether a crime was actually committed, to clarify who may be suspected of it and whether there is a sufficient basis for the prosecutor to demand the initiation of court proceedings. Activities undertaken within the framework of the investigation consisted in: questioning suspects and persons who could have known something about the crime or its perpetrator; collecting necessary information about the suspect, in particular about his or her motives, attitude to the victim, the degree of mental development, personality, earlier life and behaviour after the crime was committed; conducting interviews and other activities resulting from the essence of the investigation. These activities were performed by the above-mentioned associations through delegates appointed from among the members of the association by its board. It is worth noting that the activities related to the independent conduct of investigations in place of the Police could be performed only by those delegates who received, at the request of the association's board, a separate authorisation to do so from the *powiat* district authority of general administration. This authorisation allowed them to perform the relevant activities in the whole territory of the state and could be revoked.

The delegates of the associations did not have any investigation powers of the Police. If it was necessary to perform an act exceeding the delegate's powers, the delegate was obliged to refer the matter to the Police, which performed this act, if the request was justified. Delegates were required to notify the Police (either verbally or in writing) of the start of the investigation (within 48 hours) and, once the investigation had been completed, of its outcome (also within 48 hours). The State Police could at any time take over the investigation conducted by a delegate who was then entitled to be only a participant of the Police investigation. Associations authorised to cooperate in detecting crimes were required to issue a card to their delegates in accordance with the models set out in the Annex to the Regulation (model "a" – white: card of a delegate authorised to participate in a Police investigation; model "b" – pink: card of a delegate authorised to conduct investigations himself or herself). These cards became valid after being certified by the district (*powiat* level) authority of the general administration (signature of the *starosta*). Delegates, on the other hand, were obliged to carry the

⁹ Journal of Laws No. 33, item 313, as amended.

card with them while performing their duties and to present it at the request of the security authorities and interested parties.

The ordinance of 15 July 1957¹⁰ authorised only the League for the Protection of Nature and the Society for the Care of Animals in the Polish People's Republic to cooperate with state authorities in the detection and prosecution of crimes provided for in the provisions of the Regulation of the President of the Republic of Poland on the Protection of Animals of 22 March 1928. This cooperation included: a) the right to check the identity of persons committing offences against animal protection; b) assistance provided to the authorities of Citizen's Militia in conducting an investigation as well as participation in an investigation, namely being present during investigation activities, questioning the investigated persons with the consent of the investigator and presenting conclusions which the investigator was obliged to take into account as far as possible. These associations carried out these activities through delegates appointed from among the members of the association. The delegates acted on the basis of the authorisation of the presidium of the *powiat* (or town, city) national council with jurisdiction over the place of their residence. The authorisation was granted at the request of the main board of the association or the branch offices of the association indicated by this board. The authorisation was valid for the entire territory of the state and could be revoked. The associations mentioned above were required to issue to their delegates cards prepared in accordance with the model which constituted an annex to the Regulation. The cards were valid after being certified by the presidium of the *powiat* (or town, city) national council.

The legislation currently in force lacks a legal regulation that would provide a similar specification of the rights of social organizations with regard to their cooperation with relevant state and local government institutions in the disclosure and prosecution of crimes and offences specified in APA. It seems surprising, all the more so because the rate of detection of crimes under Art. 35(1–2) of APA has decreased in recent years (this Art. applies to acts such as: killing, killing or slaughtering an animal in violation of the provisions of the Act and abuse of an animal).¹¹ Therefore, in order to increase

¹⁰ The Ordinance of the Ministers of Justice and Internal Affairs of 15 July 1957 on authorising certain associations to cooperate with state authorities in the detection and prosecution of crimes against animal protection, Journal of Laws No. 41, item 185. This Ordinance entered into force on 5 August 1957 and was repealed on 24 October 1998, following the repeal of the legal basis.

¹¹ According to the Police statistics, the detection rate of offences under Art. 35(1–2) of APA between 1999 and 2017 was as follows: 2017 – 59.7%; 2016 – 55.9%; 2015 – 64.5%; 2014 – 58.0%; 2013 – 60.1%; 2012 – 60.4%; 2011 – 62.0%; 2010 – 65.4%; 2009 – 66.5%; 2008 – 65.6%; 2007 – 70.2%; 2006 – 69.5%; 2005 – 69.1%; 2004 – 69.4%; 2003 – 64.8%; 2002 – 69.4%; 2001 – 69.9%; 2000 – 79.2%; 1999 – 81.0%. See the data published on <http://statystyka.policja.pl/st/wybrane-statystyki/wybrane-ustawy-szczegol/ustawa-o-ochronie-zwier/50889,Ustawa-o-ochronie-zwierzat.html> [access: 05.05.2019]. The statistical picture of offences against humanitarian animal protection is presented in: M. Gabriel-Węglowski, *Przestępstwa przeciwko humanitarnej ochronie zwierząt*, Toruń 2008, pp. 183–198; D. Karaś, „*Niech zwierzęta mają prawa!*” *Monitoring ścigania oraz*

the effectiveness of the activities of the Police in the field of animal protection,¹² the Police should cooperate more closely with non-governmental organisations in this respect.¹³ Dawid Karaś seems to be right when he claims that non-governmental organisations can make an important contribution to Police work by: providing advice and guidance on how to proceed in a given situation; making an initial assessment of the animals' living conditions and fitness; providing temporary care for animals that have been taken away from their owners (guardians) by Police officers or that need to be taken away from their owners (guardians); providing direct assistance to animals which have suffered or may suffer as a result of human activities (e.g. animals affected by road accidents; abandoned, lost or wild animals which pose a threat by being outside the place they usually live); supplying evidence of acts prohibited by APA, secured as a result of the activity of these organisations, which significantly limits the scope of evidence-gathering acts that the Police needs to conduct.¹⁴

The aforementioned lack does not mean that in the current legislation in force, social organisations whose statutory aim is to protect animals cannot cooperate with competent state and local government institutions in detecting and prosecuting offences specified in APA. Obviously, such cooperation is sometimes undertaken, but it is not specified in any procedures, and the representatives ("inspectors") of social organisations, whose role is, to a certain degree, emphasised in the provisions of APA, act in principle within the framework of general civil rights, which significantly hinders their effective performance of their tasks, especially in situations where immediate intervention is necessary. In addition, as Wojciech Radecki rightly pointed out, even if the provision of Art. 40 of APA did not exist, cooperation of an organisation with

karania sprawców przestępstw przeciwko zwierzętom, „Przegląd Prawa i Administracji” 2017, Vol. 108, pp. 17–30; L. Drwęski, *Ocena skuteczności ścigania przestępstw związanych z ochroną zwierząt – obraz statystyczny*, [in:] *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, red. T. Gardocka, A. Gruszczyńska, Toruń 2012, pp. 231–242; A. Habuda, W. Radecki, *Przepisy karne w ustawach o ochronie zwierząt oraz o doświadczeniach na zwierzętach*, „Prokuratura i Prawo” 2008, Nr 5, pp. 33–35.

¹² On the role of the Police in the protection of animals, see, e.g. K. Siedlarz, *Interwencje Policji w sprawie zwierząt*, [in:] *Urzędnik jako strażnik realizacji ustawowych obowiązków wobec zwierząt*, red. T. Pietrzykowski, A. Bielska-Brodziak, K. Gil, M. Suska, Katowice 2016, pp. 155–167; J. Zaborowski, *Ściganie przestępstw i wykroczeń godzących w zwierzęta oraz zapobieganie im*, [in:] *Status...*, pp. 245–252.

¹³ Urszula Szymańska and Arleta Lepa argue that "(...) the practice shows that activities aimed at improving animal welfare are more effective when they are supported by citizens' initiatives and by non-governmental organisations set up by citizens to help animals". See idem, *Rola społeczeństwa i organizacji pozarządowych w ochronie zwierząt przed przestępstwami*, [in:] *Perspektywy rozwoju sektora organizacji pozarządowych*, red. U. Szymańska, M. Falej, P. Majer, M. Hejbudzki, Olsztyn 2015, p. 201.

¹⁴ D. Karaś, *Postępowanie w przypadku przyjęcia zgłoszenia o zdarzeniu z udziałem zwierząt. Algorytm dla policji*, Kraków–Wrocław 2016, p. 8, <https://zwierzetaiprawo.org/wp-content/uploads/2018/05/CzarnaOwca-NiechMajaPrawa-ReagowaniePolicja-PUBLIC.pdf> [access: 05.05.2019].

state and self-government institutions would be acceptable,¹⁵ also as regards cooperation in the area of detection and prosecution of criminal offences, especially if this cooperation was limited to the notification of a criminal offence. This is because according to Art. 304 para. 1 of the Act of 6 June 1997 – The Code of Criminal Procedure,¹⁶ whoever learns that an offence prosecuted has been committed, shall be under civic duty to inform the state prosecutor or the Police. The cooperation in question can also be initiated by the Police. Such possibility is provided for by Art. 15(1)(7) of the Act on the Police of 6 April 1990,¹⁷ according to which, the Police, when carrying out preliminary investigation, criminal investigation as well as administration and order-keeping activities in order to identify, prevent and detect crimes and petty offences, have the right to request necessary assistance from entrepreneurs and social organisations – and in cases of emergency, from any person – to provide temporary assistance, under the legal provisions in force. All this significantly diminishes the importance of the commented provision and, consequently, makes one reflect on the advisability of keeping it in its present form.

Finally, it is worth noting that regardless of the state of affairs presented above, Polish social organisations quite often cooperate with the Police. According to the report on the state of cooperation of non-governmental organisations with public and self-government administration and uniformed services in carrying out animal protection tasks,¹⁸ the representatives of most of the surveyed social organisations favourably assessed this cooperation, in particular with the Police and the municipal police, and the participation of the officers of these services in joint interventions was considered “helpful”. Interestingly, such a high assessment of cooperation with uniformed services was not even affected by the fact that at the same time, in the opinion of the representatives of the surveyed organisations: a) officers of uniformed

¹⁵ W. Radecki, *Ustawy o ochronie zwierząt. Komentarz*, Warszawa 2015, p. 263.

¹⁶ Consolidated text, Journal of Laws of 2018, item 1987, as amended

¹⁷ Consolidated text, Journal of Laws of 2019, item 161.

¹⁸ The report *Stan współpracy organizacji pozarządowych z administracją publiczną i samorządową oraz służbami mundurowymi w realizacji zadań z zakresu ochrony zwierząt* (Kraków, April 2013) was prepared on the basis of the results of the survey conducted from 23 January to 28 February 2013 by the Foundation “Czarna Owca Pana Kota” within the framework of the project co-financed by the European Social Fund: “Sieć OFF – Ogólnopolskie Forum Fauna”, https://czarnaowca.org/download/raport_2013.pdf [access: 05.11.2019]. 224 social organisations whose main or secondary statutory aim is to protect animals were invited to participate in the survey. The questions were directed primarily at the analysis of forms of interaction and cooperation between non-governmental organisations and public administration in the field of animal protection. Cf. a report on the monitoring of courts, prosecutors’ offices and the Police: *Jak Polacy zwracają się nad zwierzętami?*, Kraków–Wrocław 2016, prepared by the Foundation “Czarna Owca Pana Kota” in partnership with the Ekostraż Association for the Protection of Animals in Wrocław, within the framework of the project “Niech mają prawa!” implemented as part the programme “Obywatele dla Demokracji”, financed by EEA grants, <https://czarnaowca.org/wp-content/uploads/2016/05/CzarnaOwca-NiechMajaPrawa-RaportRozszerzony-PUBLIC-20160516.pdf> [access: 05.11.2019].

services tend to have little knowledge of animal protection law regulations and, additionally, are definitely not willing to acquire knowledge and experience in this field; b) uniformed services are rather reluctant to cooperate with social organisations in the field of animal protection (although the opposite assertion had almost as many supporters in the survey); c) officers of the uniformed services sometimes have a dismissive attitude towards issues related to the protection of animals. In the opinion of the authors of the survey, the high assessment of cooperation of social organisations with relevant state and local government institutions results to some extent from its formal nature (its course and possible forms are defined by the law), and what may additionally strengthen it is the constant raising of legal awareness on both sides. This is all the more important due to the fact that, as the survey in question shows, the vast majority (87.65%) of the surveyed organisations cooperated with uniformed services within the scope of their statutory activities for the protection of animals. These organisations usually cooperated with the Police (77.78%) and the municipal police (70.37%). They much less frequently cooperate with the Fire Service (38.27%). Only three surveyed organisations cooperated with other uniformed services (Customs Service, Prison Service, Railway Protection Guard). Cooperation of social organizations with uniformed services concerned mainly intervention in cases of suspected animal abuse by their guardians (76.54%) and providing assistance to injured, homeless or free-living animals (54.32%). In the remaining cases (7.41%), the scope of cooperation covered such issues as: using the 112 emergency number in cases related to animals; organising speed measurements of vehicles in speed limit zones where protected animals migrate; joint educational activities; collection of animal feed.

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Abstract: In the process of humanitarian protection of animals social organisations play an extremely significant role. To some extent, it is reflected in the regulations of the Animal Protection Act of 21 August 1997 (consolidated text, Journal of Laws of 2019, item 122), where the legislator obligates the Veterinary Inspection and other competent authorities of government administration and local government to cooperate in the field of animal protection with social organisations whose statutory purpose is animal protection. Unfortunately, the normative value of these regulations is insignificant, as is the scale of their practical application. The best example of that is the possibility of cooperation in the field of revealing and prosecuting crimes and petty offences, mentioned in the title. That leads to the situation where social organisations themselves frequently postulate removing from the Animal Protection Act of the regulations they are the addressees of, and which, in their assessment, due to their general character and anachronism, lead exclusively to blurring of the responsibility for the fate of animals. Meanwhile, it must be taken into consideration that the level of cooperation between the society and state institutions is the measure of democracy in a given society and a feature characterising civil society.

Keywords: animals; protection of animals; humanitarian protection; social organisations; cooperation; crimes