

Evolution of the Regulation and Character of Municipal Programmes for the Care of Homeless Animals and Animal Homelessness Prevention in Poland

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Abstract One of the legal forms of action to be applied by a commune for the care of homeless animals is to develop and implement homeless animal care programmes and prevent animal homelessness. The whole regulations examined below clearly demonstrate that the commune carries out its duties as mentioned above, cooperating with registered and legally operating animal shelters. Derogations from this principle may be regarded as the unlawful fulfilment of commune's own tasks, which is the subject of an audit by the State Veterinary Inspectorate or the voivodeship governor. However, it may be difficult to make a clear identification of the legal nature of homeless animal care programmes and animal homelessness prevention as acts of local law or planning acts as internal law acts. The views of scholars and case-law on this issue are not uniform.

Keywords: • protection of animals • homeless animals • care programmes • homelessness prevention • Poland

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[https://doi.org/10.4335/18.3.767-790\(2020\)](https://doi.org/10.4335/18.3.767-790(2020))
ISSN 1581-5374 Print/1855-363X Online © 2020 Lex localis
Available online at <http://journal.lex-localis.press>.

1 Introduction

The issue of proper handling of animals is important for ethical, educational, legal and economic reasons. Humane treatment of animals is an expression of man's attitude towards all living creatures and is always one of the measures of his humanity. It is related to the morality of both individuals and entire social groups. It indicates that one is guided by ethical rules and norms in life. It manifests the ethical relationship of a person towards the non-human animal world. Insensitivity to animal suffering leads to the brutalisation of life. The attitude towards animals is formed on the basis of an accepted and followed value system. It remains under the influence of religion, environment, or the example of others. An important inspiration for the humane treatment of animals is pedagogical considerations. The moral sensitivity of man is built during the deliberate process of education, in which contacts with animals are an important instrument of the formation of an animal-friendly personality. Forming the characters of people sensitive to the fate of living beings is based on the awareness that animals feel pain and suffer just like humans (Frieske, Grochowska, Mroczkowski, Piwczyński, Sitkowska, 2015: 34).

The sphere of protection of animal rights falls within the areas of social life where the social attitude to certain problems is a measure of the level of its development of civilisation. The objectives and content of animal protection law have developed according to human needs, changing across eras. Originally, the intention to protect selected animal species came from religious beliefs (Helios, Jedlecka, 2016: 51-72; Woleński, 2012: 11-28) and later a significant role was played by economic considerations. The first orders and prohibitions applied to specific animal species and were intended to safeguard the privileges of the rulers: holders and users of nature (Bronowska, 2002: 46; Listos, Dylewska, Gryzińska, 2017: 115; Radecki, 1990: 12; Samsonowicz, 1991: 39; Sobczak, 2012: 167-167; Raba, 2010: 151-152).

The discovery by man of the question of animals as an issue requiring legal regulation took place only at the beginning of the 19th century, when humanitarianism was born in France. It means recognising human dignity, fraternity and equality between people as the highest value. The humanitarian attitude required respect for man and a desire to spare him suffering. In earlier centuries, the value of human life was not high. And if human life was valued low, it was difficult to value animal lives in the face of well-established beliefs about human superiority over the animal. The prevalence of the idea of humanism has resulted in the application to animals of the reasoning that initially regarded humans alone.

Today, humanitarianism means not only respect for other people and minimising their sufferings, it concerns all living beings and constitutes the axiological foundation for the protection of animals and their proper treatment. Indisputably, the right to effective protection in every aspect has been granted to animals, as each animal, whether domestic or wild, is an immanent part of the natural environment and is a manifestation of its richness and diversity to which it contributes by its very existence. Caring for animals has become not only a legal, but also an ethical imperative. In the Polish Act on the protection of animals, this is reflected in Article 1, which states that "An animal, as a living being capable of suffering, is not a thing. Man owes them respect, protection and care" (Habuda, Radecki, 2008: 21).

Homeless animals, pursuant to the provisions of Article 4 (16) of the Act of 21 August 1997 on the protection of animals (hereinafter APA), are defined as domestic or farm animals, who escaped, went astray or have been abandoned by a human and it is not possible to identify their owner or other person who had taken care of them before. Therefore, homelessness may concern only animals belonging to species traditionally cared of by man, widely recognized as farm animals (utility and domestic) or kept by people for company. Hence, the definition of homelessness implies being cared for as a rule from which homelessness is an exception caused by escape, going astray or abandonment. The list of reasons for homelessness is closed.

It seems that the fight against the animal homelessness may be effective, and the means to achieve this include limiting the reproduction of animals, marking them and sensitizing people to the needs of animals caring for them. Nevertheless, even the most extensive action will never eradicate the problem of homelessness completely.

The obligation to provide appropriate care and protection to homeless animals under Article 11 (1) APA was imposed on the commune as its own task. Pursuant to the content of Article 166 (1) of the Constitution of the Republic of Poland (Journal of Laws 1997, No. 78, item 483, as amended), own tasks of local government units are such public tasks that serve meeting the needs of the local community. Their goal is to meet both the collective and individual needs of the population of a given area who, by law, constitute the local community (Wyporska, 2002: 44). Therefore, the commune's obligation is to catch homeless animals as well as provide them with the necessary care. Undoubtedly, in order to accomplish these tasks commune must establish cooperation with entities running animal shelters in such a way that these tasks are actually fulfilled, i.e. to ensure that homeless animals are appropriately cared of and to prevent the very homelessness. The overriding function of an animal shelter is to provide optimal conditions for the stay of animals in these facilities (Kaliski, 2013: 121-

131), but for various reasons, the operators of the shelters do not always properly fulfil their tasks. However, the shelter operator is only a direct contractor to perform tasks of providing care to homeless animals, assigned by the legislature to communes.

One of the legal forms of action to be applied by a commune for the care of homeless animals is to develop and implement homeless animal care programmes and prevent animal homelessness. This study is to address the analysis of all regulations related to this issue, which will be done on the basis of normative acts, case law and literature. The task is not easy, due to the fact that the relevant provisions remained inconsistent for quite long and were formulated at a fairly high level of generality. Also, a clear decision on the legal nature of programmes for the care of homeless animals and the animal homelessness prevention as acts of local law or planning acts which are acts of internal law may prove difficult because the views of scholars in the field and the case-law are not uniform in this matter.

The main method used in the article is primarily the legal dogmatic method. It has been used to analyse and assess the legal regulation regarding animal protection in Poland; the manner of implementation of own tasks by municipal government and selected judicial decisions. As an auxiliary tool, the legal theoretical method was used, aimed at the assessment, in the light of the theory of administrative law, of the institution of municipal programmes for the care of homeless animals and the animal homelessness prevention, developed and implemented by local government bodies .

2 Evolution of the legal regulation on homeless animals

The need to address the issue of protecting homeless animals is determined by the scale of the phenomenon. In Poland, despite the efforts of communes and NGOs, the number of shelters and animals staying there is still growing. For example, in 2011 there were 150 animal shelters in Poland, while in 2017 the number was 213 (Wypych, 2016: *passim*). This situation is largely the consequence of numerous omissions and inefficiency of the legislature. For several dozen years, this problem had been ignored in legal regulations regarding humanitarian protection of animals, and when the issue appeared - a solution was adopted involving catching homeless animals and killing them. This was done as part of the broadly understood "protection against homeless animals" to combat contagious animal diseases, or in connection with the need to protect wildlife animals.

2.1 International and European Law

The issue of homeless animals has been recognized in international law (Przyborowska-Klimczak, 2002: 93-116; Przyborowska-Klimczak, 2004). However, the Universal declaration of animal rights proclaimed in Paris on 15 October 1978 at the UNESCO headquarters on 15 October 1978 in Paris (Kurzępa, 1999: 163-164), does not address this issue directly. Instead, it generally lists human obligations towards the animal world, indicating that "All animals have the right to the attention, care and protection of man" (Article 2). The provision of Article 6 also states that: "All companion animals have the right to complete their natural life span" and " Abandonment of an animal is a cruel and degrading act."

European Convention for the Protection of Pet Animals of 13 November 1987 defines a "stray animal" as "a pet animal which either has no home or is outside the bounds of its owner's or keeper's household and is not under the control or direct supervision of any owner or keeper" (Article 1) and allows the possibility of reducing the number of such animals. Pursuant to the provision of Article 12 of this Convention, if a State Party considers the number of stray animals to be problematic, it may take "the appropriate legislative and/or administrative measures necessary to reduce their numbers in a way which does not cause avoidable pain, suffering or distress". Poland is not a party to this convention. The problem of protecting homeless animals is not subject to EU regulation.

2.2 Domestic law

2.2.1 Origins

The first Polish legal act providing for humanitarian protection of animals was the Ordinance of the President of the Republic of 22 March 1928 on the protection of animals (Journal of Laws 1932, No. 42, item 417). For the entire duration, i.e. until 24 October 1997, it was not supplemented by provisions on the matter in question. It also did not provide for a general ban on killing animals, which led to a kind of sanctioning of the solutions adopted on the basis of the Ordinance of the President of the Republic of Poland on combating contagious animal diseases of 22 August 1927 (Journal of Laws No. 77, item 673, as amended). The competent administrative authorities were ordered to immediately kill stray dogs "suspected of rabies". Such animals should have been considered to have been in contact with an animal being sick or suspected of rabies. Dogs and cats became suspected already when one could even suppose that they had come across such an animal. Under these circumstances, the authorities could authorize the capture and observation of a dog suspected of being infected only by way of exception (Articles 65-67). The implementation of the above obligation was undoubtedly

associated with various abuses (Matecki, 1949: 228-229). It is worth mentioning that under the applicable legislation the district (powiat) veterinary officer may order the killing of animals which have had contact with a sick animal only if it is necessary (§ 2(2)(4) and (5) and § 4(2)(1)(a) and (c) of the Ordinance of the Minister of Agriculture and Rural Development of 7 January 2005 on combating rabies, Journal of Laws No. 13, item 103).

It was not until the early 1960s that in order to unify administration activities, attempts were taken to regulate the problem of homeless animals by means of an internal act. The guidelines constituting an annex to circular letter No. 48 of the Minister of Municipal Management of 3 October 1961 regarding the regulation of the issue of stray dogs and cats in cities (Official Journal of the Ministry of Municipal Management of 1961, item 103) introduced an order to terminate unattended animals, unless they were not picked up by the owners from the shelter, where dogs could stay 14 days and cats up to 5 days. Animal owners had the right to collect their animals on specified dates, but in the case of dogs the collection could take place under the additional conditions of vaccinating the animal against rabies, paying the tax due and signing the obligation to properly care for the dog. Animals which were terminally or contagiously ill were to be immediately euthanised on the basis of a veterinarian's diagnosis. In principle, stray animals were to be taken to shelters by shelter employees or public members, who were also informed about the possibility of delivering to the shelters "unnecessary animals, especially blind litter of dogs and cats" to be euthanised. Shelters could be run by municipal cleaning companies and branches of the Animal Care Society. They were subject to constant supervision by an official veterinarian. Animals placed in shelters were to be fed regularly. The humanitarian activity aimed at solving the problem of stray animals was to be guaranteed also by introducing the requirement of cooperation and mutual control by competent administrative authorities and the Animal Care Society.

The real purpose of the solutions described above, which certainly was not to protect stray dogs and cats, was confirmed in the Act of 13 September 1996 on maintaining cleanliness and order in communes (Journal of Laws 2018, item 1454, as amended; hereinafter : AMCOC), which in Article 3 (2)(5) (in the wording applicable until December 31, 2011) imposed on communes the obligation to ensure cleanliness and order in their area and to create the conditions necessary for their maintenance, including the "organisation of protection against homeless animals on the rules as set out in separate regulations". However, this issue was regulated only in the Act of 21 August 1997 on the protection of animals (APA), which on 24 October 1997 replaced the above-mentioned Ordinance of the President of the Republic of 22 March 1928 on the protection of animals. According to the original wording of Article 11 paragraphs 1, 3 and 4 APA, communes were required to provide care for and catching homeless animals,

which, like the "the deciding on the further proceeding with them", could only take place pursuant to a resolution of the relevant municipal council, adopted after consultation with the state veterinarian and after consulting the authorised representative of the Animal Care Society in Poland or other social organization with a similar statutory purpose. At the same time, these organizations were authorized to care for homeless animals and to run animal shelters for this purpose (in consultation with the competent local government bodies).

In turn, according to the authorisation contained in Article 11 (2) APA, the Minister of the Interior and Administration issued on 26 August 1998 an ordinance on the principles and conditions for catching homeless animals (Journal of Laws No. 116, item 753). Pursuant to the provisions of the ordinance, catching homeless animals could be of a regular or periodic nature, depending on the content of the resolution adopted in this matter by the municipal council. At the same time, the commune's body was obliged to publicly disclose, in a manner customary used in a given area, at least 21 days before the planned date of commencement of catching homeless animals: 1) date of the catching; 2) the boundaries of the area where they will be caught; 3) the address of the shelter with which the placement of animals after catching has been agreed; 4) the entity which carries out the catching.

Based on the above analysis, it can be concluded that the provisions described above have remained inconsistent for a long time when it comes to the subject of protection. Moreover, they were formulated at a fairly high level of generality. They did not specify the requirement to ensure the space in shelters for caught homeless animals, nor did they address issues such as preventing homelessness of animals, how to proceed with caught animals or the veterinary conditions to be met by the shelter.

2.2.2 The currently applicable regulations

Changes in this respect were introduced by the Act of 16 September 2011 amending the Act on the protection of animals and the Act on maintaining cleanliness and order in communes (Journal of Laws No. 230, item 1373), which became effective on 1 January 2012. The amendment changed the wording of Article 3(2) (14) AMCOC by introducing, instead of the current obligation of "protection against homeless animals", the order, addressed to communes, of the "prevention of animal homelessness" (Cyman, 2014: 293). The amended provisions in APA included Article 11 (3) introducing a ban on catching homeless animals without providing them a place in an animal shelter. The violation of the prohibition in question was subject to a penalty of imprisonment or fine (Article 37 (1) APA). The only exception is when the animal presents a serious risk to humans or other animals. In addition, the legislature decided to add to Article 4

APA the statutory definition of "animal shelter", according to which it is a place intended for the care of animals that meets the conditions set out in the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases (Journal of Laws 2018, item 1967). As a side note, it should be stated that the emergence of the definition of "animal shelter" only in 2012 does not mean that until then the functioning of this type of entities remained outside any legal regulation. The requirements to be met by animal shelters are set out in the Ordinance of the Minister of Agriculture and Food Management of 21 January 1999 on detailed veterinary conditions required for organizing fairs, roundups and exhibitions, and running animal shelters (Journal of Laws No. 9, item 84), then in the Ordinance of the Minister of Agriculture and Rural Development of 5 November 2002 on the detailed veterinary conditions required for running animal shelters (Journal of Laws No. 192, item 1611) and in the Ordinance of the Minister of Agriculture and Rural Development of 23 June 2004 on the detailed veterinary requirements for running animal shelters (DVRAS) (Journal of Laws No. 158, item 1657).

The animal homelessness model applicable before the amendment was subject to reservations raised by J. Miłkowska-Rębowska. Article 11 APA stated that "Providing care for and catching homeless animals is one of own tasks of communes. (...) Catching homeless animals and deciding on further proceeding with these animals takes place only pursuant to a resolution of the municipal council adopted after consultation with the district veterinary officer and after seeking the opinion of an authorized representative of a social organization whose statutory purpose is to protect animals." J. Miłkowska -Rębowska demonstrated that interpretation difficulties, and the room for abuse (as the practice showed), was followed by the phrase "and on further proceeding with these animals", because it gave communes a considerable, maybe too much, discretion in terms of influencing the fate of the animals caught. Voivodeship governors many times stated in supervisory decisions that it is contrary the constitutional principles of the protection of property rights to establish that ownership of a caught animal is transferred after a certain period of time to the shelter or another person (e.g. Supervisory Decision of the Kuyavian-Pomeranian Voivode of July 23, 2008, WNK.IV.MT.0911-23/08, LexPolonica no. 2400174 and Supervisory Decision of the West Pomeranian Voivode of September 28, 2005 PN.2.W.0911/156/05, LexPolonica no. 2242015). An equally important issue was a vague expression of "providing care to animals". The enigmatic "care" without any control led to the death of animals (Miłkowska-Rębowska, 2012: 25-26). 25-26).

The currently applicable regulations specify requirements for: shelter location; preparing the area where the shelter is to be located; rooms to be ring-fenced in the shelter and the materials used to finish them; technical equipment necessary for the disposal or temporary storage of animal corpses; equipping the

compartments; access to paddocks; veterinary care and compulsory vaccinations; training of people employed for handling the animals; documentation kept (list of animals in the shelter, veterinary inspection book).

3 Municipal programmes for the care of homeless animals and animal homelessness prevention

3.1 An obligation to define a programm

Pursuant to the provision of Article 11 (1) APA preventing homelessness of animals, providing care for homeless animals and catching them is one of the communes' own tasks (Szalewska, 2016: 91-107; Golenia, Marek, 2016: 13-29). To guarantee the correct implementation of this obligation, the legislature by way of Article 11a APA, which was added by Article 1 (8) of the Act of 6 June 2002 amending the Act on the protection of animals (Journal of Laws 2002, No. 135, item 1141) and entered into force on 28 September 2002, introduced the institution of programmes for the care of homeless animals and preventing animal homelessness (Smaga, 2010: 241). 241).

On 1 January 2012, the provision of Article 11a APA came into force in the new wording that was given to it by Article 1 (9) of the Act of 16 September 2011 amending the Act on the protection of animals and the Act on maintaining cleanliness and order in municipalities (Journal of Laws 2011, No. 230, item 1373). The norm of this provision obliges *expressis verbis* municipal councils to define, by resolution (annually until 31 March), programmes for the care of homeless animals and animal homelessness prevention, and specifies their scope by listing the issues that they should cover. The draft program is prepared by the head of the commune (mayor, city president) who is obliged to forward it to the competent district veterinary officer by February 1 at the latest; social organizations whose statutory goal is to protect animals operating in the commune (see the judgement of the Regional Administrative Court in Wrocław of November 18, 2014, II SA/Wr 667/14.); tenants or operators of hunting districts operating in the commune. Within 21 days of receipt of the draft program, these entities shall issue opinions on the draft. Failure to issue the opinion within this period shall be deemed as acceptance of the submitted programme (Article 11a (6) to (8) APA).

The opinion of these entities is of a non-binding nature, so there are no obstacles to the adoption of the programme by the commune contrary to the opinion of the consulted entity. The opinion is subject to free assessment by the municipal council, which adopts the animal care programme. Nevertheless, preparation of a negative opinion as regards the provisions of the programme for the care of homeless animals may be relevant in subsequent activities aimed at either

annulling the resolution determining the programme for the care of animals and homelessness of animals or taking audit activities by the supervision authority pursuant to Article 88 of the Act on municipal government with respect to the manner of implementing the adopted resolution, the programme for the care of homeless animals and preventing homelessness of animals (Rudy, 2018: 31-41).

3.2 Practice of adopting municipal programmes

From the very beginning, the implementation of the precept expressed in the content of Article 11a (1) APA amended on 1 January 2012 caused many difficulties to communes. This is indicated by the results of the audit carried out by the Supreme Audit Office (NIK) in the period from 3 September 2012 to 23 January 2013 (the audit covered the years 2011 and 2012) in 18 municipal offices and in 19 shelters and other entities dealing with the care of animals based on agreements concluded with communes (including catching them), from the voivodehips (regions) of Lublin, Łódź, Lesser Poland, Masovia, Podlasie, Silesia, Świętokrzyskie, Warmia and Mazury, Greater Poland and West Pomerania (Informacja o wynikach kontroli: „Wykonywanie zadań gmin dotyczących ochrony zwierząt” (pp. 41), LBI-4101-13-00/2012, Nr ewid. 46/2013/P12/193/LBI, available at <http://www.nik.gov.pl/plik/id,5160,vp,6685.pdf>. (February 20, 2020). The main purpose of this audit was to assess the implementation of tasks by communes in the field of animal protection, "with particular emphasis on the introduction of regulations resulting from the amended Act on the protection of animals". The Supreme Audit Office negatively assessed the performance of statutory tasks in the field of animal protection by communes and shelters. The grounds for this position pointed inter alia to: not taking effective measures to reduce the population of homeless animals (in 50% of the communes audited); failure to comply with the ban on catching homeless animals without providing them a place in shelters (61%) and outsourcing these activities to entities that did not have the required permits (67%) or without adopting an appropriate resolution by municipal councils (40%); unlawful or inefficient spending of 1,653.7 thousand PLN (36% of the funds from the budgets of 18 municipalities) to entities that did not have the required permits and did not provide a defined standard of animal care services; lack of control over the use of public funds and caring for animals in shelters and other places of their keeping (50%).

According to the findings of the Supreme Audit Office, the irregularities revealed stemmed mainly from overcrowding of legally operating shelters, which prevented the placement of more homeless animals there and the difficulties related to the selection of entities that would, if necessary, provide care to farm animals and entities ready to provide 24-hour veterinary care for animals that have suffered road accidents. When looking for the reasons for this situation, the

Supreme Audit Office pointed to the "imperfection" of Article 11a APA, which results in i.a. adopting by the voivodship governors different supervisory decisions with respect to resolutions issued by municipal councils on the basis of this provision. This primarily concerned the legislature's failure to specify whether the programmes adopted by municipal councils are acts of local law and the introduction of a closed catalogue of tasks that such a programme could cover (Article 11a (2) APA in the wording applicable as of 6 January 2017). The Supreme Audit Office also contested the manner of exercising supervisory rights of the communes in relation to their subordinate units. These entities were audited and accounted for funds transferred for the implementation of tasks and audited for the manner how the tasks were performed. For the procurement of services from entities outside the public finance sector, the basis for the verification of correct spending of public funds were mainly the analysis of invoices for services rendered. However, no financial audits were carried out, and very rarely were the conditions of animal stay in shelters inspected. At the same time, inspections on the conditions for animals were superficial and did not explain, for example, the causes of mortality and overcrowding (Suska, 2016: 47-48).

A similar picture when it comes to the practice of adopting municipal programmes for the care of homeless animals and the animal homelessness prevention emerged from reports of social organizations. A good example of this is the results of monitoring carried out by the Animal Protection Association "EKOSTRAŻ" from Wrocław (a study by the Animal Protection Association "EKOSTRAŻ" entitled "Uchwały rad gmin w sprawach bezdomnych zwierząt" ("Resolutions of commune councils in the field of homeless animals") published as part four of the document "HYCEL 2014. Raport o problemie bezdomnych zwierząt" ("DOG-CATCHER 2014. Report on the problem of homeless animals") developed by the Animal Protection Office of the ARGOS Foundation for Animals, Warsaw, September 2014, available at <http://www.boz.org.pl/raport/2014/index.htm>.; (February 28, 2020).

The solution introduced on 1 January 2012 gave rise to numerous practical difficulties, which is why the legislature introduced further amendments on 6 January 2017 (Act of 15 November 2016 amending the Act on the protection of animals, Journal of Laws 2016 item 2102). The inconsistency of regulation of Article 11 (1) and Article 11a (1) APA by supplementing the scope of communes' own tasks to prevent animal homelessness and the nature of the list contained in Article 11a (2) APA from closed to open, while maintaining the existing mandatory elements. The change of the nature of the list allows communes to make their own tasks more flexible, while adding paragraph 3a to Article 11a APA has enabled the financing of tasks involving the sterilization or castration of animals having owners.

3.3 Municipal programme content

According to the current wording of Article 11a (2) APA, the municipal programme for the care of homeless animals includes in particular: 1) providing homeless animals with a place in an animal shelter; 2) care for free-living cats, including their feeding; 3) catching homeless animals; 4) obligatory sterilization or castration of animals in animal shelters; 5) seeking owners for homeless animals; 6) euthanasia of blind litter; 7) specification of the farm to provide a space for farm animals; 8) providing round-the-clock veterinary care in cases of traffic incidents involving animals (Brończyk, Brzostek, 2016: 31-44). Furthermore, according to the provision of Article 11a (5) APA, the programme shall provide for financial resources allocated for its implementation and the manner of their spending. The list includes obligatory elements of the programmes (see judgement of the Regional Administrative Court in Wrocław of 4 December 2014, II SA/Wr 676/14).

The catching of homeless animals takes place solely on the basis of a resolution of the municipal council setting out a programme for the care of homeless animals and preventing homelessness of animals (Article 11 (3) sentence 2) (Kotara, Drapalska, 2016: 67-82). When introducing the obligation to catch homeless animals, the legislature does not make its implementation conditional on whether these animals are infected or pose a security threat (judgement of the Regional Administrative Court in Wrocław of 4 December 2014, II SA/Wr 676/14; another assessment of the solution consisting in catching in the first place animals posing a risk to human health is contained in the judgement of the Regional Administrative Court in Wrocław of 12 November 2014, II SA /Wr 603/14) or their general condition - e.g. that they are neglected (judgement of the Regional Administrative Court in Wrocław of 5 November 2014, II SA/Wr 602/14). This reservation is important because the inclusion of this and similar regulations in programmes actually leads to a modification of the statutory notion of "homeless animals", which results in the need to declare them invalid. As it has already been indicated, these acts are based on statutory authorisations and cannot go beyond statutory regulations, introduce exceptions to generally adopted statutory solutions or modify them. It is worth noting that the legislature did not specify in the Act on the protection of animals how often homeless animals should be caught within the municipal area.

3.4 Cooperation with entities running animal shelters

Undoubtedly, in order to accomplish these tasks commune must establish cooperation with entities running animal shelters in such a way that these tasks are actually fulfilled, i.e. to ensure that homeless animals are appropriately cared of and to prevent the very homelessness.

Pursuant to § 6 of the Ordinance of the Minister of the Interior and Administration of 26 August 1998 on the rules and conditions for catching homeless animals (Journal of Laws No. 116, item 753, hereinafter: RCCHA), homeless animal, once caught, should be immediately transported to an animal shelter or to another suitable place. The methods and devices used to catch them should not pose threats to homeless animals or to make them suffer. Means of transport of these animals must meet the conditions set out in Article 42 (1) APA on the transport of animals and their handling during transport, loading and unloading (Rejman, 2006: 267).

The purpose of catching homeless animals varies, depending on the legal basis for using this measure. Contrary to popular belief, the ordering of catching referred to in Article 11 APA and Article 7 of the Act of 13 September 1996 on maintaining cleanliness and order in communes, hereinafter referred to as: AMCOC) reflects another protected good. It is either the animal welfare (care) in the case of APA or the good of people (protection against) referred to in AMCOC (Szelepajło 2010, p. 142). According to W. Radecki, many interpretation problems arise from the issue of providing care to homeless animals, including, first of all, the running of animal shelters. It follows from Article 11 (1) APA that the mere provision of care for homeless animals is part of the commune own tasks. In turn, Article 11 (4) APA. states that social organizations whose statutory aim is to protect animals may operate animal shelters in consultation with the competent authorities of the local government.

A Szelepajło (Szelepajło, 2010: 143) argues that the currently applicable regulations on animal shelters are inconsistent. The relation of the mentioned provisions of APA to those of AMCOC raises doubts. First of all, the entities which pursue the activity under Article 11 (4) APA are social organizations, whereas under Article 7 (1) AMCOC these are entrepreneurs (undertakings). Secondly, the purpose of the shelter's operation, in accordance with Article 11 APA is clearly specified (provision of care), while in AMCOC it is not determined. Thirdly, pursuant to Article 11 (4) APA, to run a shelter, an agreement with the competent local government bodies is required, while in accordance with Article 7 (1) AMCOC, obtaining a permit is required.

In Article 7 (1) AMCOC. the legislature introduces the obligation to obtain permit from the commune head (mayor, city president) for running shelters for homeless animals by any entity other than a municipal organizational unit, but only if the entity is an entrepreneur within the meaning of the Act on Entrepreneurs Law of 6 March 2018 (Journal of Laws of 2019, item 1292, hereinafter referred to as: AEL). Hence the question appears: is a social organization statutorily interested in the protection of animals required to obtain a permit from the commune head (mayor, city president), which undoubtedly takes the form of administrative

decision, or does it suffice to enter into an agreement which is a slightly less stringent form of cooperation? (Radecki, 2015: 83). W. Radecki believes that in a situation where an animal protection social organization intends to run an animal shelter, its legal situation depends on whether it may be deemed an entrepreneur within the meaning of AEL. If so, it is obliged to obtain a permit from the commune head (mayor, city president) issued in the form of an administrative decision pursuant to Article 7 AMCOC. Otherwise, only Article 11 (4) APA is applied and agreement with relevant local government bodies can be considered sufficient (Radecki, 2015: 83). 83).

To sum up, based on APA and AMCOC, it should be stated that animal shelters can be run by municipal organisational units (Article 7 (5) of the Act on maintaining cleanliness and order in Communes), entrepreneurs (Article 7 (1) of the Act on maintaining cleanliness and order in communes) or social organizations whose statutory purpose is to protect animals (Article 11 (4) APA). A commune that deems it reasonable to establish its own organizational unit to run a shelter for animals faces the problem of choosing its appropriate form (Suska 2016: 52). The list from Article 2 of the Act of 20 December 1996 on municipal services management (Journal of Laws of 2011, No. 45, item 236 as amended, hereinafter: AMSM) is of an exemplary nature only, and apart from the local government budgetary establishment and commercial law companies, one can also point to a municipal budgetary unit or a cooperative with the participation of the commune , an association in which the commune is a supporting member, an association of associations with the participation of the commune, or a foundation founded by the commune (Szydło). In a situation where the shelter is run by a municipal organisational unit, the commune has wide possibilities of action towards the shelter and at the same time bears full responsibility for its proper functioning. Detailed rights of the commune in this situation will be defined by regulations, based on which the municipal organisational unit was established.

Certainly, within the meaning of the provisions, animal shelters do not include the place intended for the care of domestic animals run by: 1) an entity which has not notified the district veterinary officer of its intention to take up activities in the field of running animal shelters (Article 5 (1)(2) of the Act on the protection of animal health and combating infectious animal diseases (hereinafter APAH); 2) the entity in relation to which the decision requiring the suspension of activities in the field of running animal shelters is in force until the infringement is removed; (Article 8 (1)(2) APAH); 3) the entity in relation to which the decision prohibiting the activities in the field of running animal shelters applies (Article 9 (1) APAH).

3.5 Animal shelters

In practice, before commencing cooperation with the shelter, the commune should check whether the shelter meets the standards set out in DVRAS. If people acting on behalf of the commune have any doubts about this, they should notify if this the district veterinary officer so that he can finally determine whether the conditions are met or not, and possibly issue one of the decisions under Article 8 or Article 9 APAH. It should be noted that while the fact that the very conducting supervised activities without meeting the veterinary requirements is an infraction (Article 85 (1) APAH), but where an epizootic or epidemic risk arises, this act will it be a criminal offence (Article 77 (1) APAH). State and local government institutions, which due to their activity found out about committing a crime prosecuted ex officio, must notify immediately the public prosecutor or the police (Article 304 § 2 of the Act of 6 June 1997 - Code of Criminal Procedure, Journal of Laws of 1997, No. 89, item 555, as amended) (Suska, 2016: 49).

The provisions of the Ordinance of the Minister of Agriculture and Rural Development of 23 June 2004 on specific veterinary requirements for running animal shelters (Journal of Laws No. 158, item 1657) do not precise living standards for animals, regarding rooms, population density or nutrition. They focus mainly on the considerations of sanitary and epidemiological safety. These provisions specify, among others, that the shelter should be located at least 150 m away from human settlements, public facilities. The land should be paved and fenced. It should contain separate rooms for medical treatments, quarantine, for sick, aggressive animals, mothers with cubs. Animals should have paddocks, permanent access to water (Bednarczyk M., Bombik E., Pietrzkiwicz K., Sokół J., Rózewicz M., 2017: 94). The shelter operator should provide veterinary care to the animals, especially in the field of: health condition check, disease prevention and treatment, control of internal and external parasites, vaccination against rabies, and also keep records for each dog (age, date of admission, adoptive data, date and cause of death) and a register with the record of admitted, adopted, fallen, bitten, escaped, euthanised animals and the documentation of animals treatment. In Article 5 (1)(2) of the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases, hereinafter: APAH) undertaking supervised activities in the field of running animal shelters is permitted upon prior written notification of its intention to conduct it to the district veterinary officer competent for the place of the activity to be pursued. Having received the application, the district veterinary officer issues a decision about assigning the veterinary identification number to the applicant. Moreover, in accordance with Article 1 (1)(j) APAH, specifies veterinary requirements for running and undertaking activities in the field of operation of animal shelters (judgement of the Regional Administrative Court in Wrocław of 25 March 2009,

III SA/Wr 1719/08). Annually, reports are made from visits to homeless animal shelters, based on inspections carried out by the district veterinary officer.

The purpose of running the entity referred to in AMCOC as the animal shelter, and therefore the purpose of the issue of the permit specified in Article 7 AMCOC is not defined by law. **Thus it should be specified by the issuer of the permit together with the adoption of a particular technology and the specification of quality standards. This is so because the purpose is not obvious.** Pursuant to Article 8 AMCOC, entrepreneurs seeking for permission to run a shelter for homeless animals should submit information about, among other things, the technologies used. In turn, the permitting head of the commune (mayor, city president) in accordance with Article 9 AMCOC specifies in the permit the quality requirements for the services covered by this permit. The Act provides for the same procedure for issuing permits to entrepreneurs conducting activities in the field of protection against homeless animals, as well as burial grounds and incineration plants for animal corpses and parts thereof. These requirements apply also for running shelters by a municipal organisational unit, however it does not have to be granted the permit (Szelepajło, 2010: 144). 144).

3.6 Providing a place in a shelter

The main duty of communes is to catch homeless animals and provide them with a place in the shelter (Suska, 2016: 45-65). **It should be noted that compliance with the competence norm imposing this obligation raises doubts.** For example, the justification of the judgement of the Regional Administrative Court in Wrocław of 2 December 2014, II SA/Wr 481/17 and the judgement of the Regional Administrative Court in Wrocław of 4 October 2017, II SA/Wr 481/17 shows that it is required for the programme to point to a specific shelter for homeless animals from the commune, specifying its name and address. A relevant agreement with the shelter should be concluded at the stage of preparation of the draft programme by the commune head (mayor, city president), which does not change the fact that the lack of pointing to a specific shelter in the resolution, despite the existing contract in this regard, causes that the programme does not meet the requirement of a specific definition of the manner of fulfillment of statutory obligations, while we read in the justification of the judgement of the Regional Administrative Court in Krakow of 22 December 2017, II SA/Kr 1394/17 that the Act does not require indicating a specific animal shelter. This obligation applies only to the "indication" of a farm for livestock, but the commune does not have to indicate either the veterinarian responsible for assistance to victims of accidents, nor the shelter. It is clear from the wording of Article 11(3) APA that it is forbidden to catch a homeless animal without providing a place in such a shelter. It is worth noting that the provisions of APA do not provide for time limits for the stay of a homeless animal in a shelter. In this

situation, it should be assumed that the commune has an obligation to provide such animals with indefinite-time care.

3.7 Legal nature of municipal programmes for the care of homeless animals and the animal homelessness prevention

A problematic issue is the legal nature of municipal programmes for the care of homeless animals and the animal homelessness prevention. The problem for both the scholars in the field and administrative judicature is whether municipal care programmes for homeless animals are acts of local law. In the opinion of some administrative courts, resolutions adopted by municipal councils pursuant to Article 11a (1) APA, they are not acts of local law within the meaning of Article 87 (2) of the Polish Constitution (Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997 No. 78, item 483, as amended) and Article 40 of the Act on municipal government (Act of 8 March 1990 on local government, Journal of Laws 2018 item 994, as amended). It was reflected by the fact that such resolution does not contain abstract and general norms addressed to entities outside the organisational structure of commune bodies. It did not decide on the rights and obligations of entities forming the local community (it is not addressed to the inhabitants of the commune), and it was task-oriented - the programme should specify the ways in which the commune should act to properly fulfil its obligations under the APA; and temporary - the programme is only valid for one year (see e.g. the judgement of the Regional Administrative Court in Wrocław of 2 December 2014, II SA/Wr 607/14; the judgement of the Regional Administrative Court in Wrocław of 18 November 2014, II SA/Wr 667/14. For an opposite view, see, for example: the judgement of the Regional Administrative Court in Opole of 31 July 2014, II SA /Op 325/14; the judgement of the Regional Administrative Court in Opole of 16 September 2014, II SA/Op 335/14; judgement of the Regional Administrative Court in Opole of 7 October 2014, II SA/Op 421/14; judgement of the Regional Administrative Court in Opole of 23 October 2014, II SA/Op 357/14; judgement of the Regional Administrative Court in Opole of 23 October 2014, II SA/Op 351/14; judgement of the Regional Administrative Court in Kielce of 11 May 2011, II SA/Ke 243/11; judgement of the Regional Administrative Court in Łódź of 27 March 2014, II SA/ Łd 99/14; judgement of the Regional Administrative Court in Poznań of 29 May 2014, IV SA/Po 286/14; judgement of the Regional Administrative Court in Lublin of 10 July 2014, II SA/Lu 909/13). Under the legislation currently in force (after adding paragraph 3a to Article 11a APA) the programmes may contain abstract and general norms addressed to entities outside the organisational structure of the commune bodies (Kruk, 2018: 45). Therefore, one should agree with the position recognising the programmes as acts of local law.

4 Conclusion

Subsequent amendments to the laws do not solve all problems related to the constantly growing homelessness of animals, but the direction of changes should be assessed positively. However, it is worth considering whether there are provisions of secondary legislation specifying the rules and conditions for catching homeless animals. It can be assumed that the Ordinance of the Minister of the Interior and Administration of 26 August 1998 on the rules and conditions for catching homeless animals (Journal of Laws No. 116, item 753) has lost its validity on 28 September 2003. However, pursuant to Article 6 of the Act of 6 June 2002 amending the Act on the protection of animals (Journal of Laws No. 135, item 1141), "Until the secondary legislation provided for in the Act is issued, but not longer than for a period of 12 months from the date of entry into force of this Act (which took place on 28 September 2002), the provisions of the current secondary legislation shall remain in force unless they conflict with it." This means that the ordinance in question, as "not contradictory" with the amended text of APA was only effective for a year from the entry into force of the amendment (Radecki, 2016: 125; Radecki, 2015: 105-107). Although 18 years have passed since that time, the minister competent for public administration did not issue a new ordinance, which led to the creation of the state referred to by scholars as "legislative lawlessness".

On one hand, it should be stated that under currently applicable law there are legal instruments enabling the commune to take effective and efficient actions limiting homelessness of animals and raising the standards of care for homeless animals in shelters. On the other hand, there are no solutions at hand in Poland to reduce the number of homeless animals. Organizations fighting for animal rights claim that communes disregard the problem of animal homelessness, reducing their activities to concluding a contract with entities that catch animals.

An audit carried out by the Supreme Audit Office in 2016, entitled "Prevention of homelessness of animals" (Informacja o wynikach kontroli: Zapobieganie bezdomności zwierząt, P/16/058, nr ewid.20/2015/P/15/001/LBI, czerwiec 2016 r. Kontrola koordynowana przez Delegaturę NIK w Białymstoku) showed that the actions taken by communes led to an increase in the number of homeless animals in shelters, and expenditure on the care were growing.

Although most of the shelters provide animals with proper sanitary conditions and proper care, and the way of recording caught animals changed but the animal adoption measures have not reduced the scale of animal homelessness. Giving out animals for adoption was not in the interest of shelters which kept animals on a daily-rate basis, owing to which keeping them for the longest time constituted a permanent source of income. And yet, the adoptions would have helped reduce

the number of animals in shelters, which over time should result in a decrease in demand for more facilities of increasingly higher standards. The communes will then cease to be forced to incur more and more expenses that do not result in the decrease in the number of homeless animals (Skorupski 2017, 107-108).

Local governments in which thoroughly developed preventive measures bring noticeable effects in the form of reducing animal homelessness are rare. Good practices that are used in them and proved effective include providing co-financing for the castration or sterilization of animals which have owners; introducing microchip implantation for all the animals, as well as registering them in a public online database, owing to which it is possible to apply to owners for reimbursement of costs of stay in the shelter of a caught animal and to provide it veterinary care during that stay.

The activities that boil down mainly to catching and placing animals in shelters neither do prevent their homelessness nor solve the problem. The problem of their homelessness may be marginalised only by a comprehensive and effective, multi-directional prevention, including permanent marking of animals enabling their identification, consistent castration and sterilization in shelters and encouragement to carry out these procedures in animals which have owners. The adoption by the Sejm on 15 November 2016 (Act of November 15, 2016 amending the act on the protection of animals, Journal of Laws of 2016 item 2102) of provisions enabling municipalities to finance sterilisation and open a catalogue of activities aimed at combating animal homelessness should be welcomed with satisfaction.

The statutory regulation leaves a considerable amount of freedom as to achieving the goal of reducing the problem of animal homelessness. It depends on the creativity of the authors of the programme, whether or not it is an effective tool. Undoubtedly, a positive influence on the content of the programme have consultations conducted in the course of its preparation with representatives of non-governmental organizations, whose statutory objectives include protection of animals.

It is possible that work will be undertaken in the future on a government draft law aimed at eliminating the problem of animal homelessness. According to the proponents of the draft, NGO activists, the Act on the protection of animals of 1997 and its amendments used to be adopted so far as ad hoc bills proposed by Sejm deputies (a petition filed on 15 November 2019 by the Social Committee for the project "Ucywilizować traktowanie bezdomnych zwierząt" ("Making the treatment of homeless animals more civilised") based at the Gliwice Center for Non-Governmental Organizations in Gliwice, represented by Janina Szymanek, addressed to the President of the Council of Ministers of the Republic of Poland,

regarding work on the government draft law to eliminate the problem of homeless animals, <http://www.boz.org.pl/ucyw/petycja.pdf>). They often ignored the legal context and norms of correct legislation. This supposedly caused the ineffectiveness of the new regulations, and in the worst case consolidation of pathology. The draft amendment to the Act on the protection of animals aims at a systemic change and is to focus on it. It is to take into account practices developed over the years that have not yet found a sufficient basis in the law. The draft provides for, inter alia, "introducing state supervision over pet breeding, as well as repealing the provisions that build the current mechanism for dealing with homeless animals for public money as an ineffective and pathological mechanism." The aim of the amendment is to limit the supply of pets by regulating and taxing the activity of breeding pets, as well as recognition of commercial pet breeding as a regulated business activity to enable state supervision over the market for such animals. It is important for the proponents to grant communes full freedom and assign them full responsibility for dealing with homeless animals under effective government supervision. Instead of establishing large shelters, the authors of the draft propose to solve the problem in communes by creating temporary homes for homeless animals. The commune head, mayor or president of the city would have the right to sign a contract with an organization that will take care of the animals and look for their owners. The authors of the project also point out the need to "repeal the fictitious supervision of veterinary inspectorates over shelters in order to introduce effective supervision of the voivodship governor over the implementation of the commune's tasks, in the form of substitute care, performed at the expense of the commune."

Acknowledgment:

The publication was prepared within the research entitled "The Administrative Law Model of Animal Protection" 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 16 May 2017 (decision no. DEC-2016/23/D/HS5/01820, contract no. UMO-2016/23/D/HS5/01820).

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- Wyrok WSA we Wrocławiu z dnia 18 listopada 2014 r., II SA/Wr 667/14.
- Wyrok WSA we Wrocławiu z dnia 2 grudnia 2014 r., II SA/Wr 607/14.

Wyrok WSA we Wrocławiu z dnia 4 grudnia 2014 r., II SA/Wr 676/14.

Wyrok WSA we Wrocławiu z 4 października 2017 r., II SA/Wr 481/17.

Other:

Informacja o wynikach kontroli: *Wykonywanie zadań gmin dotyczących ochrony zwierząt*, LBI-4101-13-00/2012, Nr ewid. 46/2013/P12/193/LBI.

Opracowanie Stowarzyszenia Ochrony Zwierząt „EKOSTRAŻ” pt. „Uchwały rad gmin w sprawach bezdomnych zwierząt” opublikowane zostało jako część czwarta dokumentu „HYCEL 2014. Raport o problemie bezdomnych zwierząt” opracowanego przez Biuro Ochrony Zwierząt Fundacji dla zwierząt ARGOS (Warszawa, wrzesień 2014).

Opinia Zarządu Związku Gmin Wiejskich Rzeczypospolitej Polskiej do poselskiego projektu ustawy o zmianie ustawy o ochronie zwierząt (druk nr 897).

Informacja o wynikach kontroli: *Zapobieganie bezdomności zwierząt*, P/16/058, nr ewid.20/2015/P/15/001/LBI, czerwiec 2016 r. Kontrola koordynowana przez Delegaturę NIK w Białymstoku