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The Rules of Keeping Pet Animals in the Light of the Laws
of the Republic of Poland and the Republic of Estonia*

Zasady utrzymywania zwierząt domowych w świetle prawa
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INTRODUCTION

The history of domestication of particular animal species goes back several thousand or even more than 10 thousand years. Domestication of dogs may have begun as early as 40 thousand years ago¹. Throughout centuries animals were kept by man mostly due to their economic usefulness which determined the domestication processes. As rightly noticed by J. Bradshaw, domestication was possible only when a human need met an appropriate animal species and was supported with suitable resources². Keeping an animal just as a companion was relatively rare and became popular not earlier than in the 20th century³. What is important, not only

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¹ P. Skoglund, E. Ersmark, E. Palkopoulou, L. Dalen, *Ancient Wolf Genome Reveals an Early Divergence of Domestic Dog Ancestors and Admixture into High Latitude Breeds*, “Current Biology” 2015, vol. 25(11), pp. 1515–1519.

² J. Bradshaw, *Zrozumieć psa. Jak być jego lepszym przyjacielem*, Warszawa 2018, p. 35.

³ Cf. Ł. Smaga, *Ochrona humanitarna zwierząt*, Białystok 2010, p. 232.

domesticated but also wild animals were often kept as human companions. It is estimated that nowadays approximately 13,000 animal species, including about 10,000 species of vertebrates⁴, are kept as pets, and that only in Europe pets are kept in ca 85 million households⁵. Due to a significant increase in the number of animals kept as companions, legal regulations were developed in order to specify the rules of keeping pets. These regulations are intended to achieve several goals. On the one hand, their purpose is to eliminate dangers which may arise from keeping animals near humans, including threats resulting from aggressive behaviour of animals and diseases transmitted by them. On the other hand, their goal is to promote animal welfare, in particular by providing animals with appropriate living conditions and protection against unnecessary suffering. Despite corresponding principles, the regulations enacted in various states are not homogeneous. This offers an opportunity for their comparative legal analysis aimed at a search for the optimum model of such regulations.

RESEARCH OBJECTIVES AND GUIDELINES

The objective of the article is to try and analyse the legal regulations specifying the rules of keeping pet animals as human companions which function in the Republic of Poland in comparison to the parallel regulations in the Republic of Estonia. Owing to the comparative character of the research, the main methods of analysis will be the dogmatic method and especially the comparative method which is supposed to demonstrate the similarities and differences of legal solutions adopted in the compared systems. The comparative research will be based on a model by W.J. Kamba⁶. On the basis of this model and taking into account an assumption that there are divergences between the Polish and Estonian regulations concerning the admissibility and conditions of keeping pets, the key elements of these regulations will be described, which shall enable identification of their characteristic features, as well as similarities and differences between them. It is assumed that on the basis of such a comparison it will be possible to identify the key structural elements of both systems and to evaluate them in terms of optimization of the current solutions.

The selection of the Estonian legislation as a point of reference for a comparative analysis of the Polish regulations concerning protection of pet animals is justified by

⁴ C. Warwick, C. Steedman, M. Jessop, P. Arena, A. Pilny, E. Nicholas, *Exotic pet suitability: Understanding some problems and using a labeling system to aid animal welfare, environment, and consumer protection*, "Journal of Veterinary Behavior" 2018, vol. 26, pp. 17–26.

⁵ Fediaf, *European Facts & Figures 2019*, http://www.fediaf.org/images/FEDIAF_facts_and_figs_2019_cor-35-48.pdf (access: 10.7.2021).

⁶ W.J. Kamba, *Comparative Law: A Theoretical Framework*, "The International and Comparative Law Quarterly" 1974, vol. 23(3), pp. 485–519.

the fact that both systems were shaped on the basis of similar historical, political and social conditions, and they currently function in similar international legal circumstances. At the same time, the Republic of Estonia is perceived as a state with the high standards of pro-ecological legislation⁷. In particular, it is worth noticing the country's determination with respect to rising environmental protection standards and developing its pro-ecological legislation, the role of nature in the Estonian culture, numerous pro-ecological social initiatives and constantly growing environmental awareness of Estonian citizens⁸. Nowadays, in scientific literature, judicial decisions and social opinions, animals' capability of physical and mental suffering, and the resultant need to protect them are treated as a paradigm in Estonia⁹. Moreover, in the Estonian doctrine, it is noticed that partial humanization of animals is going on these days¹⁰, and it is considered whether it would be possible and helpful to grant animals, as a so-called vulnerable group, certain fundamental rights¹¹.

Tangible actions for the protection of animal welfare were undertaken in the territory of contemporary Estonia as early as in the 19th century¹². The first Estonian regulations concerning animal protection were adopted after Estonia became independent in 1918. In the beginning, these were local regulations enacted at the level of towns and counties, while a draft act on animal welfare was prepared in 1935¹³. The contemporary Estonian regulations on animal protection started developing after the Republic of Estonia regained independence in 1991. The fundamental regulation in this respect was the Act of 17 November 1992 on the Protection of Animals¹⁴, the primary objective of which was to protect animals in natural conditions and in husbandry against human violence. Similarly, the first Polish regulations concerning animal protection go back to the interwar period. The Regulation of the President of Poland of 22 March 1928 on the Protection of Animals¹⁵ played the crucial role in this respect until 1997.

The fact that the Republic of Estonia and the Republic of Poland are members of the European Union, which they both joined on 1 May 2004, has an influence

⁷ K. Popławski, *Stan i ochrona przyrody Estonii*, "Dziki Życie" 2012, no. 3, p. 41.

⁸ Cf. *ibidem*; E. Kruk, *Polish and Estonian Regulations on Homeless (Stray) Animals*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), p. 146 ff.

⁹ M.A. Susi, *Animals' Mental Suffering Paradigm in Estonian Judicial and Media Environment*, "Przegląd Prawa Administracyjnego" 2018, no. 1, p. 9 ff.

¹⁰ M. Kaaristo, *Vägivald loomade vastu: inimene ja koduloom Lõuna-Eesti külas 19. sajandi teisel poolel vallakohtude protokollide näitel*, "Mäetagused" 2006, vol. 31, p. 51.

¹¹ M.A. Susi, *Empowering Animals with Fundamental Rights – The Vulnerability Question*, "East-West Studies" 2017, vol. 76(8), p. 85.

¹² More in L. Ots, *Loomakaitse ja inimeste suhtumine loomadesse 1930. Aastate Eestis*, "Mäetagused" 2006, vol. 31, pp. 63–85.

¹³ *Ibidem*, p. 70.

¹⁴ RT 1992, 50, 617.

¹⁵ Journal of Laws 1928, no. 36, item 332, as amended.

on the development of regulations on the protection of pets. Article 13 of the Treaty on the Functioning of the European Union of 25 March 1957¹⁶ provides that the European Union and the Member States are obliged to take into account animal welfare only at formulating and implementing certain policies, including agricultural policy, fisheries, transport, internal market, research and technological development, and space policies. It is pointed out that animal welfare does not formally belong to the EU's values and aims specified in Articles 2–3 of the Treaty on European Union, the EU is not competent to determine the animal welfare standards in any areas not enumerated in Article 13 of the TFEU¹⁷, and that the issue of pet animal welfare is within the competence of Member States and constitutes a so-called non-harmonized sector¹⁸. However, it should be noted that these issues are not completely disregarded by the EU legislator. This is manifested by the adoption of the European Parliament Resolution of 4 July 2012 on the establishment of an EU legal framework for the protection of pets and stray animals (2012/2670(RSP))¹⁹ which contains, i.a., a call on the European Commission to put forward an EU legal framework for the protection of pets and stray animals, including: rules for the identification and registration of animals; stray animal management strategies, including vaccination and sterilisation programmes; measures to promote responsible ownership of pets; prohibition of unlicensed kennels and shelters for animals; prohibition of the killing of stray animals without medical indication; information and educational programmes in schools on animal welfare, and sanctions to be imposed on any Member State which fails to comply with the rules of pet protection. Furthermore, the EU legislator regulates some detailed aspects of keeping pets. An example is the Regulation (EU) No. 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No. 998/2003²⁰. Furthermore, in the EU law there are numerous regulations which – even though they do not pertain directly to the rules of keeping pets – have a considerable influence on their situation. The legal acts which are significant for the admissibility of pet keeping include the Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein²¹, and the Commission Regulation (EC) No. 865/2006 of 4 May 2006 laying down detailed

¹⁶ Journal of Laws 2004, no. 90, item 864[2], hereinafter: the TFEU.

¹⁷ K. Sowery, *Sentient Beings and Tradable Products: The Curious Constitutional Status of Animals Under Union Law*, *Forthcoming*, “Common Market Law Review” 2018, vol. 55, p. 2.

¹⁸ M. Górski, J. Miłkowska-Rębowska, *Komentarz do art. 13 Traktatu o funkcjonowaniu Unii Europejskiej*, [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, vol. 1: *Art. 1–89*, eds. D. Miąsik, N. Półtorak, A. Wróbel, LEX/el. 2012.

¹⁹ OJ C 2013/C 349 E/08.

²⁰ OJ L 178/1, 28.6.2013.

²¹ OJ L 61/1, 3.3.1997, as amended.

rules concerning the implementation of Council Regulation (EC) No. 338/97²². Thus, the EU law sets certain standards with respect to pet animal welfare which have to be taken into account at the enactment of domestic regulations in this area.

In view of the international context of the compared regulations, it should be pointed out that both the Republic of Poland and the Republic of Estonia are members of the Council of Europe which adopted the European Convention for the Protection of Pet Animals²³. The Convention was signed on 13 November 1987 in Strasbourg and became effective on 1 May 1992. The objective of the Convention is to ensure welfare of pets which Article 1 (1) of the Convention defines as any animals kept or intended to be kept by man in particular in his household for private enjoyment and companionship. The provisions of the Convention specify the rules of pet keeping, including basic principles of animal welfare which comprise: a prohibition on causing pet animals unnecessary pain, suffering or distress, and abandoning them, as well as the principles of keeping pets, their breeding, training, trading in and reproduction, using pets in advertising and entertainment, the rules of their participation in exhibitions and competitions, and the principles of surgical operations modifying the appearance of an animal. The Convention is not included in the list of international treaties which should be signed by all EU Member States, and neither the Republic of Poland nor the Republic of Estonia has ratified it so far. In Poland, it is claimed that in consequence of the ratification of the Convention the Polish solutions would have to be adjusted to its provisions, as a result of which the current animal protection standards would have to be lowered, because the solutions in the Polish legal acts are in some cases more rigorous than the provisions of the Convention²⁴.

NORMATIVE FOUNDATIONS OF KEEPING PET ANIMALS

The basic legal act determining the standards of keeping pet animals in the Republic of Poland is the Act of 21 August 1997 on the Protection of Animals²⁵. The Act regulates, i.a., the principles of breeding and trading in pet animals, the conditions of keeping them, the rules of their protection against suffering, including the proceedings in a situation when an animal is a victim of cruelty. Furthermore, on the basis of Article 3 (2) (13) of the Act of 13 September 1996 on

²² OJ L 166/1, 19.6.2006, as amended.

²³ European Convention for the Protection of Pet Animals signed on 13 November 1987 in Strasbourg, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67d> (access: 10.11.2021), hereinafter: the Convention.

²⁴ A letter of the Minister of Agriculture and Rural Development No. DSPiO.WI.4810.436.2016 of 21 October 2016 containing a reply to a parliamentary question No. 6834 of 20 October 2016 on the ratification of the European Convention for the Protection of Pet Animals.

²⁵ Consolidated text, Journal of Laws 2020, item 638, hereinafter: the PAPA.

Keeping Cleanliness and Order in Local Districts²⁶, local authorities specify the requirements for people keeping pets with respect to safety and cleanliness in public places. A separate regulation is the Act of 11 March 2004 on the Protection of Animal Health and on Combating Infectious Diseases of Animals²⁷ which specifies, e.g., the rules of identification of these animals and the duties connected with vaccination of animals against infectious diseases.

In the Estonian law, the standards of keeping pets are regulated by the Act of 13 December 2000 on the Protection of Animals²⁸. The Act specifies in particular the duties connected with protection of health and welfare of pet animals and with appropriate conditions of keeping them. The statutory provisions are supplemented with the Regulation of the Minister of Agriculture No. 76 of 24 July 2008 on the Requirements for Keeping Pet Animals²⁹. The Regulation specifies the spatial conditions (including cages, aquariums and terrariums) in which pets are kept, as well as the basic requirements for feeding and watering animals, keeping animals in groups and weaning puppies. Furthermore, § 22 (1) (36²) of the Act of 2 June 1993 on the Organization of Local Government³⁰ authorizes local councils to specify the rules of keeping dogs and cats. Regulations issued on this basis determine the admissibility of keeping dogs and cats within premises and their presence in public places, provide for tagging and registration of pets and catching of stray animals. Another regulation is the Act of 16 June 1999 on Monitoring of Animal Diseases³¹ which lays down the requirements for vaccination of pets against rabies.

DEFINITION OF A PET ANIMAL AND A RANGE OF SPECIES KEPT AS HUMAN COMPANIONS

The scope of both regulations is determined by the notion of a pet animal. Both regulations comprise legal definitions of such animals. According to the definition contained in Article 4 (17) of the PAPA, pets are animals which traditionally stay with people at home or in other suitable places and are kept as human companions. On the other hand, § 2 (3) of the EAPA provides that a pet is an animal kept for private entertainment or for companionship, or intended for this purpose. Furthermore, regulations concerning pets are applicable also to animals trained for special purposes, e.g., those used by blind people, police or fire brigade. The key element of both definitions is the recognition that animals kept by

²⁶ Consolidated text, Journal of Laws 2021, item 888.

²⁷ Consolidated text, Journal of Laws 2020, item 1421.

²⁸ RT I 2001, 3, 4, hereinafter: the EAPA.

²⁹ RTL 2008, 66, 938.

³⁰ RT I 1993, 37, 558.

³¹ RT I 1999, 57, 598.

humans as their companions are pet animals. Even though the definition in Article 4 (17) of the PAPA does not mention explicitly the element of keeping animals for personal entertainment, as opposed to § 2 (3) of the EAPA, it seems that the companionship and entertainment purposes can be recognized as identical in the vast majority of cases. Consequently, it can be assumed that both definitions are unanimous in this respect and that they also correspond to the way a pet animal is defined in Article 1 (1) of the Convention for the Protection of Pet Animals.

Nevertheless, it is worth noticing that Article 4 (17) of the PAPA stipulates that only an animal “traditionally staying with a human at home or in another suitable place” can be considered a pet animal. However, the reference to the criterion of “traditional staying with a human at home”, contained in the definition from Article 4 (17) of the PAPA, raises considerable doubt, because in many cases it may be difficult to indicate which animals “traditionally stay with a human at home”. While the presence of certain animals at a human home is obvious in some parts of the world, in other places it may be perceived negatively, e.g., due to cultural and religious reasons. Secondly, we should take into account a rapid evolution of habits connected with keeping various species of animals at home. Hence, we should agree with a statement that the statutory definition of a pet animal has an open character and gets broader as more and more species are kept by humans as companions³², and that pet animals are also those which have been kept by people only recently, under the influence of fashion³³. Consequently, even these animal species which are kept as human companions very rarely, or even exceptionally, should be treated as pets if they are kept for this purpose, even though they do not meet the prerequisite from Article 4 (17) of the PAPA of being an animal which traditionally stays with a human at home or in another suitable place³⁴. The solution from § 2 (3) of the EAPA should be considered much better because it does not contain a corresponding reservation and thus raises no doubt that all animals kept by people as companions are provided with the same protection. It cannot be concluded that an animal kept by a human as a companion is not provided with the protection offered by the EAPA to pet animals just because it does not belong to a species commonly kept as a pet.

Furthermore, § 2 (3) of the EAPA stipulates that pet animals are not only those kept for the purpose of personal entertainment or companionship, but also those intended for that purpose. The definition from Article 4 (17) of the PAPA does not mention explicitly the category of animals which are intended to be kept

³² K. Kuszlewicz, *Prawa zwierząt. Praktyczny przewodnik*, Warszawa 2019, p. 82.

³³ W. Radecki, *Ustawa o ochronie zwierząt. Komentarz*, Wrocław 2003, p. 29.

³⁴ More in G. Lubeńczuk, *Administrative Restrictions with Respect to Keeping Pet Animals in the Light of Polish Law and the Convention for the Protection of Pet Animals*, [in:] *Legal Protection of Animals*, eds. E. Kruk, G. Lubeńczuk, H. Spasowska-Czarny, Warszawa 2020, p. 198.

as human companions, but it should be emphasized that the scope of the PAPA also comprises this group of animals. This follows clearly from the legal provisions contained in Chapter 2 of the PAPA which specify, e.g., the restrictions on breeding, trading in and purchasing animals which only potentially can be kept later as human companions³⁵.

Furthermore, the scope of the Polish regulation is influenced also by Article 2 (1) of the PAPA which states that the Act pertains to vertebrates. On the other hand, the EAPA does not contain such a reservation and § 2 (1) of the EAPA states explicitly that an animal is a mammal, bird, reptile, amphibian, fish or invertebrate. Hence, unlike Polish law, Estonian regulations pertain also to invertebrate animals. In the light of the results of scientific research which confirms clearly that invertebrates can feel pain just as vertebrates, the Estonian solution seems more appropriate.

Irrespective of the doubts raised, it should be assumed that a species is not important for classification of an animal into the category of a pet within the understanding of both Polish and Estonian definitions. On the basis of the definition from Article 4 (17) of the PAPA, in judicial decisions it is stated explicitly that reptiles, birds and insects can be considered pet animals³⁶. Thus, if we accept a definition adopted in literature which states that a domesticated creature is the one which: (i) has a specific value for man and is bred for particular purposes, (ii) its breeding is fully controlled by man, (iii) its morphology and physiology demonstrate features which never occur in wild variants, and (iv) some of them would never survive in natural environment³⁷, it should be assumed that non-domesticated animals can also be pets, including animals living at large (wild animals) kept as human companions. Contrary to the stance adopted in the Polish doctrine, animals dangerous to life of people or of other animals can also be considered pets³⁸. In any case, it ought to be assumed that as long as such animals are kept as human companions they should be treated as pets. Neither Polish nor Estonian regulations make the humane protection of animals dependent on the level of their aggression or threat posed by them³⁹.

Furthermore, § 2 (3) of the EAPA stipulates that the regulations concerning pets must be used also with respect to animals trained for special purposes. This reserva-

³⁵ More in *ibidem*.

³⁶ Judgement of the Voivodeship Administrative Court in Lublin of 10 November 2016, II Sa/Lu 656/16.

³⁷ Cf. e.g. J. Clutton-Brock, *A Natural History of Domesticated Mammals*, Cambridge 1999; J.E. Terrel, J.P. Hart, S. Barut, N. Cellinese, A. Curet, T. Denham, C.M. Kusimba, K. Latinis, R. Oka, J. Palka, M.E.D. Pohl, K.O. Pope, P.R. Williams, H. Haines, J.E. Staller, *Domesticated Landscapes: The Subsistence Ecology of Plant and Animal Domestication*, "Journal of Archaeological Method and Theory" 2003, vol. 10, pp. 323–368.

³⁸ Differently W. Radecki, *Ustawa o ochronie zwierząt...*, p. 29; idem, *Ustawy o ochronie zwierząt, o doświadczeniach na zwierzętach – z komentarzem*, Warszawa 2007, p. 47.

³⁹ In the Polish law cf. Ł. Smaga, *op. cit.*, p. 232.

tion does not extend the definition of a pet animal to include also animals used for special purposes, but only provides them with the same protection as pet animals. The Polish regulation does not contain a corresponding reservation. On the other hand, both the definition from Article 4 (17) of the PAPA and the definition contained in § 2 (3) of the EAPA make it possible to classify as pets also these animals which are at the same time farm animals or animals used for special purposes, and, as a consequence, to apply to them, within a relevant scope, the regulations referring to specific categories of animals. On the basis of both definitions, it is also possible to change the status of an animal, that is a situation when an animal kept originally as a pet or intended for such a purpose becomes a farm animal, a utility animal, an animal used for experimental purposes – or the other way round.

The Polish judicature represents a view that an animal gains the status of a pet on condition that an emotional relationship is established between man and the animal, a “human herd” gives the animal the right to stay around people as a herd member, and the animal is treated by household members as a favourite (that is an individual which is liked more than other representatives of the same species, a dependant or a charge) or as a member of the family herd⁴⁰. Contrary to this stance, on the basis of Article 4 (17) of the PAPA, there are no grounds to make the status of a pet conditional on the establishment of a positive relationship between a human and an animal. Similarly, § 2 (3) of the EAPA does not stipulate such a condition. Otherwise, it could be concluded that if such relationships were negative or were not established at all, an animal would not be given protection granted to pets by law, whereas exactly in such situations animals could be at high risk of improper treatment.

RESTRICTIONS ON KEEPING PET ANIMALS

In view of the provisions of the PAPA and the EAPA, it can be claimed that both these acts permit keeping pet animals as a rule, whereas any restrictions should be regarded as exemptions. In the Polish regulation it is emphasized that it is not possible to introduce a ban on keeping pets in the rules of maintaining cleanliness and order in a local district⁴¹. It is also pointed out that in the Polish legislation there are no provisions which would enable a ban on keeping pets on the basis of consent given by co-owners of a multi-residential building⁴². Simi-

⁴⁰ Judgement of the Supreme Administrative Court of 29 April 2009, II OSK 1953/08, Legalis.

⁴¹ Judgement of the Voivodeship Administrative Court in Białystok of 16 February 2010, II SA/BK 627/09, Legalis.

⁴² A. Oleksyn-Wajda, *Ilość posiadanych psów i kotów nie może być ograniczona w regulaminie utrzymywania czystości i porządku w gminie*, 19.06.2013, <https://www.prawo.pl/samorzad/ilosc-posiadanych-psow-i-kotow-nie-moze-byc-ograniczona-w-regulaminie-utrzymywania-czystosci-i-porzadku-w-gminie,89338.html> (access: 10.11.2021).

larly, in the Estonian regulation it is stated that the right of possession cannot be restricted e.g. by the condition of obtaining neighbours' consent, and introduction of limits on a number of animals kept is considered unconstitutional and contrary to the property law⁴³. It is even pointed out that the right to keep a pet is a constitutional right granted to everybody⁴⁴. Nevertheless, it does not mean that the right to keep pet animals has an unlimited scope. Both the Polish and the Estonian laws introduce restrictions which can be classified into two basic categories. On the one hand, these are the restrictions on keeping certain animal species as pets, and on the other hand, these are the limitations connected with fulfilment of specific conditions on the basis of which it is permitted to keep pets.

Both in the Polish and Estonian regulations, species-based restrictions are based on the so-called negative lists indicating the animal species which cannot be kept as pets. This is a solution opposite to the ones used in some states (e.g., in Belgium), that is so-called positive lists which specify which animal species can be pets. In the light of the Polish law, species-based restrictions include: a total ban, resulting from Article 73 of the Act of 16 April 2004 on the Protection of Nature⁴⁵, on possessing and keeping live species which, due to their natural aggression or biological properties, can pose a serious threat to life or health of people, whereas keeping other species of animals dangerous to life and health can be permitted only on the basis of an administrative decision which lifts this ban; a duty, resulting from Article 10 of the PAPA, to obtain a licence to keep dog breeds regarded as dangerous; a duty, specified in Article 10 of the Act of 13 October 1995 – Hunting Law⁴⁶, to obtain a licence to keep greyhounds and their crossbreeds, as well as the restrictions on keeping animal species covered by strict or partial protection, based on the Protection of Nature Act, and the Regulation of the Minister of Environment of 16 December 2016 on the Protection of Animal Species⁴⁷ with Annexes issued on the basis of the Act. In the Estonian law, such restrictions are introduced in particular by the Act of 18 November 1998 on the Protection and Use of Fauna⁴⁸. Pursuant to § 2 (3) of this Act, an animal living in the wild can be acquired and kept only in a manner specified by or on the basis of the Act. Furthermore, § 7 (1) of the aforementioned Act stipulates that animals can be kept outside their natural environment if: they have been lawfully brought to the Republic of Estonia, they are kept in accordance with the requirements laid down by law, they are not under protection, and they are kept in the conditions

⁴³ Eestima Loomakaitse Liit, *Hea loomasõber*, <http://loomakaitse.eu/kasside-ja-koertedamamise-eeskirjade-vastuolud-seadusega> (access: 10.7.2021).

⁴⁴ *Ibidem*.

⁴⁵ Journal of Laws 2018, item 1614, as amended.

⁴⁶ Journal of Laws 2018, item 2033, as amended.

⁴⁷ Journal of Laws 2016, item 2183.

⁴⁸ RT I 1998, 107, 1763.

which prevent them from breaking free. Pursuant to § 7 (4) of the Protection and Use of Fauna Act, it is acceptable to acquire live protected species with consent of the Minister of Environment. An important role is also played by the Act of 1 June 1994 on Protected Natural Objects⁴⁹ which introduces restrictions on relocation of protected species and emphasizes compliance with the international agreements with respect to bringing to the Republic of Estonia, trading in and keeping animals protected on the basis of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including, in particular, a prohibition to use for commercial purposes the species enumerated in Annex I to the CITES and the species of wild fauna and flora in danger of extinction, as well as the requirement to register owned specimens of protected species and the species enumerated in the Annexes to CITES, as well as any transactions in them.

Among the restrictions connected with the necessity to fulfil certain conditions in order to have a pet, we should first indicate the subject-related conditions referring to specific qualifications of a person who wants to keep a pet animal. In this respect, § 33 (1) of the EAPA stipulates that a person under 16 can purchase or obtain an animal free of charge only with consent of a parent or a legal representative, and possible exceptions must be based on legal provisions. Moreover, § 3¹ (1) of the EAPA introduces the requirement for a pet owner to have essential knowledge of animal anatomy and physiology, behaviour typical of a given species and animal protection requirements necessary to ensure health and welfare of the pet. Furthermore, § 3¹ (4) of the EAPA authorizes competent ministers to impose a duty on a person who keeps animals to complete a training on proper keeping of such animals. What is characteristic, the Polish regulations do not contain corresponding solutions. In literature, it is explicitly indicated that the provisions of the Polish law do not make the right to acquire an animal conditional on any special qualifications⁵⁰. In particular, there are no requirements for any specific age, knowledge or skills.

REQUIREMENTS CONCERNING THE CONDITIONS FOR KEEPING PET ANIMALS

Another group of restrictions connected with a necessity to fulfil certain conditions for keeping pet animals are the requirements concerning the standards of animal keeping. They pertain mostly to the spaces in which animals are kept, access to water and feed, and an opportunity for an animal to fulfil its behavioural needs. The regulations of both the Polish and the Estonian law introduce quite detailed requirements pertaining to the conditions of keeping an animal.

⁴⁹ RT I 1994, 46, 773.

⁵⁰ Cf. M. Goettel, *Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013, p. 61.

Article 9 (1) of the PAPA imposes on a person who keeps a pet animal a duty to provide the animal with a place protecting it from cold, heat and precipitation, access to daylight, opportunity to change body position at ease, proper feed and constant access to water. Furthermore, Article 9 (2) of the PAPA prohibits keeping animals tethered at a distance shorter than 3 metres and for longer than 12 hours a day, in a manner that inflicts injury or suffering, or prevents necessary movement. Pursuant to Article 6 (2) of the PAPA, keeping animals in improper conditions, neglecting them, keeping untidy, putting them into spaces or cages in which they cannot maintain a natural position, failure to provide an animal with appropriate feed or water for a period exceeding the minimum needs of its species, using harness, ties, racks, fetters or other equipment which forces an animal to remain in an unnatural position or inflicts unnecessary pain, bodily injury or death are examples of animal abuse which, in the light of Article 35 (1a) in conjunction with Article 35 (1) of the PAPA, constitutes a crime punishable by imprisonment for up to 3 years. Furthermore, the provisions of § 5¹ (1) of the EAPA stipulate that pet animals can be kept in closed spaces only for a short time and on condition that their welfare is ensured. Spaces and objects used for keeping pet animals must enable an animal to see, hear and communicate in this space or surroundings, in accordance with the behavioural habits of its species. Furthermore, § 5¹ (2) of the EAPA stipulates that spaces, objects and equipment for keeping pet animals must be safe for the animal and easy to clean. Pursuant to § 5¹ (3) of the EAPA, equipment used for feeding and watering pet animals should be placed in such a way as to minimize the risk of contamination of feed and water. Spaces and objects used for keeping pet animals must be equipped appropriately to a given species, should take into account behavioural habits of an animal, such as: scratching, digging, chewing, hiding, swimming, diving or nest building, and should be provided with materials necessary to do these actions. Detailed requirements for keeping particular animal species are specified in the Regulation of the Minister of Agriculture of 24 July 2008 on the Requirements for Keeping Pet Animals⁵¹. The provisions of this Regulation specify, in particular: the rules of keeping animals tethered, their feeding, and the minimal size and furnishings of spaces where pets are kept, taking into account elements of physiology, e.g., size and weight of an animal, and – what is especially worth emphasizing – its behavioural habits.

Furthermore, § 5¹ (1) of the EAPA stipulates that health and welfare of pet animals should be monitored regularly, especially at the time when an animal is born, reproduces, is sick and when significant changes are occurring in the animal's environment. Whenever deviations from normal behaviour are detected, actions should be taken to improve health and welfare of the animal, especially medical treatment should be provided to an animal which has fallen ill or has been injured.

⁵¹ RTL 2008, 66, 938.

What is important, pursuant to § 9 (3) of the EAPA, veterinary procedures, including dog and cat tattooing and inserting a microchip implant for identification purposes, must be carried out by a veterinarian or a veterinary student under direct supervision of a veterinarian who bears responsibility. However, treatments which do not take a lot of time and cause only minor pain can be performed also by a person who has completed relevant training. The Polish legislation does not introduce explicitly a duty to monitor health and welfare of pet animals on a regular basis. However, similarly to the Estonian regulation, Article 6 (2) (8) of the PAPA prohibits surgeries and operations on animals performed by people with no necessary qualifications, against the rules of veterinary medicine, without essential care and caution, or in a manner inflicting pain which could have been prevented.

Another requirement connected with the keeping of pet animals is their identification and registration. The Estonian Monitoring of Animal Diseases Act § 11 (1), imposes on pet owners a duty to ensure identification of their animals. Pursuant to § 10 of this Act, identification of animals may consist in their tagging, description or determination of ownership. Tagging consists in supplying a permanent and unique artificial badge which makes a pet identifiable. Description can be used for animals the tagging of which is impossible or ineffective. Animals which can neither be tagged nor described due to very similar appearance between particular specimens of the species are identified on the basis of their ownership. In this case, it is considered that an animal belongs to a person who possesses the animal, or keeps it in a closed area or in a building, unless a person interested in ownership of the animal proves otherwise. Moreover, § 11 (1) of the Monitoring of Animal Diseases Act stipulates that local government units should run a register of dogs and of other pet animals, if necessary. The rules of animal identification are specified in local regulations issued on the basis of § 22 (1) 36² of the Organization of Local Government Act which authorizes local councils to specify the rules of keeping dogs and cats. In accordance with this authorization, many Estonian cities introduced either a duty or a recommendation to tag dogs and cats with microchip implants and to enter them in a register of pets⁵². Pursuant to § 66³ (1) of the Organization of Local Government Act, infringement of the regulations on keeping dogs and cats is subject to a fine up to 100 units. This provision can be

⁵² The following examples can be mentioned: § 5 of the Regulation No. 24 of the City Council of Tallinn of 18 April 2013 – Rules of Keeping Dogs and Cats in Tallinn (RT IV, 24.04.2013, 73), which introduces a duty to tag dogs and cats with a microchip implant and their mandatory registration; §§ 3–5 of the Regulation No. 71 of the City Council of Tartu of 21 May 2015 – Rules of Keeping Dogs and Cats (RT IV, 28.05.2015, 4), which introduces a duty to tag dogs with a microchip implant and recommends that other pets should also be tagged, as well as provides for mandatory registration of pet animals; § 5 of the Regulation No. 22 of the City Council of Narva of 24 October 2019 – Establishment of Rules of Keeping Dogs and Cats (RT IV, 1.11.2019, 10), which states that dogs and cats must be tagged with a microchip implant and registered.

the basis for liability in case of failure to tag and register an animal. Furthermore, pursuant to § 29 (1) of the Hunting Act of 25 April 2013⁵³, the documents necessary to use a dog at hunting are: a passport of a hunting dog or another document confirming the dog's breed and the certificate that the dog has been tagged with a microchip implant or a tattoo. Hunting with a dog without such documents is subject to a fine of up to 100 units.

The Polish regulations do not contain a duty to tag pet animals. Article 11a (3) of the PAPA stipulates that a plan of animal tagging can be introduced in programmes of care for stray animals and prevention of animal homelessness enacted by local councils. However, such plans are not mandatory and only few local districts prepare them. The following reasons are mentioned: fact that such plans are non-obligatory, involvement of only certain districts, not enough funds, lack of a legal basis for a local district to co-finance actions for pets who have owners⁵⁴. What is important, a plan drawn up on the basis of Article 11a (3) of the PAPA cannot impose a duty of tagging animals, because – according to the rulings of administrative courts – an obligation for dog owners to tag their pets would exceed the statutory scope⁵⁵. Consequently, it is unacceptable to introduce any sanctions for failure to tag an animal⁵⁶.

Another requirement connected with keeping pets is a duty to vaccinate them against infectious diseases, rabies in particular. In the Estonian law, the obligatory vaccination against rabies follows from § 43¹ (2) of the Monitoring of Animal Diseases Act. Dogs and cats must be obligatorily vaccinated, first in the 3rd–4th month of life and next not later than 24 months after last vaccination. Pursuant to § 58² of the Act, infringement of veterinary requirements concerning animal keeping is subject to a fine up to 200 units and if this prohibited act was committed by a legal person it is subject to a fine up to EUR 2,000. Furthermore, Article 56 (1) and (2) of the Polish Protection of Animal Health and on Combating Infectious Diseases of Animals Act impose a duty to vaccinate dogs against rabies. Dog owners are obliged to vaccinate their pets against rabies within 30 days since the dog became 3 months old, and then at least every 12 months. Moreover, on the basis of Article 56 (6) of this Act, the Minister of Agriculture can introduce obligatory vaccination of cats against rabies. Pursuant to Article 85 (1a) of the aforementioned Act, whoever evades the duty of vaccinating animals against rabies is subject to a fine.

⁵³ RT I, 16.05.2013, 2.

⁵⁴ Najwyższa Izba Kontroli, Delegatura w Białymstoku, *Zapobieganie bezdomności zwierząt. Informacja o wynikach kontroli*, LBI.430.004.00.2016, <https://www.nik.gov.pl/plik/id,11233,vp,13582.pdf> (access: 14.8.2021), p. 8.

⁵⁵ Judgement of the Voivodeship Administrative Court in Kraków of 19 December 2017, II SA/Kr 1497/17.

⁵⁶ Resolution of the Head of Podkarpackie Province of 28 April 2015, P-II.4131.2.54.2015.

CONCLUSIONS

The comparison between the Polish and Estonian regulations pertaining to the principles of keeping pet animals leads to a conclusion that both systems have a similar object-related scope. Both regulations specify the admissibility of acquiring and keeping pet animals, the requirements for trade in such animals, the conditions of keeping them, as well as the duties related to identification, registration and vaccination of pets. It can also be pointed out that both regulations are based on the same fundamental premises: that it is admissible to keep pet animals with possible exclusions or restrictions on keeping protected or dangerous species and as long as the pets are provided with appropriate living conditions. In addition, in certain cases admissibility of keeping pets can be conditional on fulfilment of a duty of pet identification (tagging), registration and vaccination against infectious diseases. Nevertheless, despite common principles, the regulations compared are not identical. One of the basic differences is a divergent definition of pet animals, limited in the Polish regulation to animals traditionally staying with people at home or in another suitable place, with exclusion of intervertebral animals from the scope of the regulations pertaining to pets. In contrast, the Estonian regulation does not contain such restrictions and should be regarded as a model solution which grants protection to all animals kept by a human as companions, irrespective of their species.

Both regulations provide for similar exclusions for keeping pet animals. It is worth noticing that these exclusions are justified mostly by the protection of certain species and possibly by a level of threat posed by these animals to their surroundings. However, the analysis of these exclusions leads to a conclusion that they do not take into account physiological and behavioural capabilities of an animal to live in the conditions different from its natural environment, especially in a confined space, separated from other animals of the same species and exposed to various stimuli not occurring in the animal's natural surroundings. In this respect, we should consider the introduction of a positive list of species that may be kept by a human. Such a solution, despite a more restrictive character, has been regarded as compliant with the EU law by the Court of Justice of the European Union⁵⁷, and evaluated as better, easier to manage, more proportional and effective, and at the same time less bureaucratic than the solutions based on negative lists⁵⁸.

⁵⁷ Judgement of the CJEU of 19 June 2008 in C-219/07, *Nationale Raad van Dierenkwekers en Liefhebbers VZW, Andibel VZW v. Belgische Staat* (OJ C 209/11, 15.8.2008), pp. 11–12.

⁵⁸ Cf. Coalition of European Animal Welfare Organisations and Wildlife Professionals, *The Use of Positive Lists to Identify Exotic Species Suitable to Be Kept as Pets in the EU*, <http://www.abysiniandatabase.com/abynews/wp-content/uploads/2015/02/positive-list-in-eu.pdf> (access: 14.8.2021); Federation of Veterinarians of Europe, *Regulation of keeping animals as companion animals through the establishment of lists*, https://www.fve.org/cms/wp-content/uploads/006_fve_position_on_positive_lists_of_exotic_species_final.pdf (access: 14.8.2021).

We should evaluate positively the Estonian regulations which stipulate that a person under 16 can purchase or obtain an animal free of charge only with consent of a parent or a legal representative, as well as the obligation for a pet owner to have essential knowledge of the pet's anatomy, physiology, behavioural habits and animal protection requirements. Although it may seem that effective implementation of these solutions may be difficult in practice and devoid of notable functional significance, they can contribute, at least to some extent, to the protection of animals against improper or incompetent treatment and against abandonment as a result of a recklessly taken decision to acquire them.

Without doubt, it is rightly claimed that a drawback of both the Polish and Estonian regulations is the lack of a statutory duty to tag all cats and dogs, as well as the lack of a central register in which they could be entered⁵⁹. In this situation, we should evaluate the Estonian solutions positively, as they enable the introduction of a duty to identify and register pet animals at least at a local level. Due to the lack of such an opportunity in the Polish law, identification and registration of animals have an entirely voluntary character, which limits a chance to prevent animal abandonment and homelessness.

The solutions adopted in the Polish and Estonian regulations with respect to ensuring proper conditions for keeping pet animals are similar. However, it seems that the Estonian regulation is more coherent but at the same time more detailed, thus providing better protection for pet animals. We should appreciate especially the provisions of the Regulation of the Minister of Agriculture No. 76 of 24 July 2008 on the Requirements for Keeping Pet Animals, which sets clear and unambiguous rules concerning the conditions which should be provided to animals, taking into account their physiology and behavioural habits.

The Estonian example indicates that in the Polish regulations there is space for the introduction of relatively simple solutions which can translate into increased cohesion and effectiveness of the pet animal protection system. Furthermore, the introduction of such a change as redefinition of the term of a pet animal to include all animals kept as human companions seems indispensable for the effectiveness of this system. We should hope that the Polish legislator shall notice the need for such changes and shall enact them as soon as possible.

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ABSTRACT

The article is an attempt at a comparative analysis of the regulations which specify the rules of keeping pet animals in the Republic of Poland and in the Republic of Estonia. The analysis is based on a model by W.J. Kamba and comprises a description of the key elements of both systems, specification of their features, and indication of similarities and differences between them, followed by the identification of the central structural elements of both systems and their evaluation in terms of optimization of the existing solutions. Furthermore, the comparison includes a definition of a pet in both legal systems which is translated into specification of the object-related scope of both regulations, as well as the basic requirements for keeping a pet animal as a human companion, including the duties connected with identification and registration of animals, vaccination of animals against infectious diseases and the conditions of keeping pets.

Keywords: rules of keeping pet animals; Poland; Estonia; pet animals; registration of animals

ABSTRAKT

Artykuł stanowi próbę porównawczej analizy regulacji określających zasady utrzymywania zwierząt domowych, które funkcjonują w Polsce i w Estonii. Analiza została oparta na modelu W.J. Kamby i uwzględniła charakterystykę kluczowych elementów obu regulacji, określenie ich cech oraz wskazanie podobieństw i różnic pomiędzy nimi, a w dalszym etapie identyfikację kluczowych elementów konstrukcyjnych obu regulacji oraz ich ocenę pod kątem optymalizacji obowiązujących rozwiązań. Porównanie obejmuje sposób zdefiniowania zwierzęcia domowego w obu regulacjach, co przekłada się na określenie przedmiotowego zakresu obu regulacji, a także podstawowe wymogi warunkujące możliwość utrzymywania zwierzęcia w charakterze towarzysza człowieka, w tym wymogi związane z identyfikacją i rejestracją zwierzęcia, wymogi dotyczące szczepienia zwierząt przeciwko chorobom zakaźnym oraz warunków ich utrzymywania.

Słowa kluczowe: zasady utrzymywania zwierząt domowych; Polska; Estonia; zwierzęta domowe; rejestracja zwierzęcia

