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**THE CRIMINAL LAW ASPECTS OF ANIMAL PROTECTION - IN
PARTICULAR THE LEGAL OFFENCE OF CRUELTY TO ANIMALS**

THESES OF THE DOCTORAL THESIS

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I. Short summary of the research objective

In my doctoral thesis, I aimed at presenting the criminal law aspects of animal protection, including the criminal offence of cruelty to animals. The main motivation for my research was that in Hungarian legal literature there is just a few professional source material particularly related to cruelty to animals, or the sources only mention the topic or one aspect of the topic marginally. Thus, enforcers are faced with a serious task in relation to a criminal case and its legal assessment, because there is no uniform literature that would examine and present each and every aspect of the subject, so that a decision can be made on the basis of it as to whether the accused has indeed committed cruelty to animals and, if so, why and on the basis of which rules the given act is punishable.

But what constitutes cruelty to animals and why might the situation in Hungary seem bad? What is an animal and what rights does it have?

These are the questions I have been looking for answers to since I first took an interest in animal rights. As a result, I wrote my dissertation on the criminal law aspects of animal protection, in which I not only cover cruelty to animals as a legal offence, but also offences similar to it.

I will examine the entirety animal protection legislation that provides the background to the legal offence of cruelty to animals. In my dissertation, I will describe the past and how cruelty to animals has evolved from a crime of vandalism to a separate, punishable offence. I will examine the legislation of several foreign countries and the criminological background to cruelty to animals. In the paper I will present both Hungarian and foreign case law, highlight the practical differences and compare the facts.

In my research, I am also looking for the answer to the question why so much cruelty to animals is still occurring in Hungary despite the criminal law and the Animal Protection Act. After all, the number of cruelty to animals cases could be reduced, given all the legal means.

The emergence of animal protection in Hungary dates back to the early 1900s. Already at that time, the view was formulated that animals are sentient beings and therefore also have the right to life. But the two world wars and the Soviet regime thwarted earlier legislative efforts.

While the first animal protection law in England came into force in 1876, it took 200 years for the same law to come into force in Hungary. According to the preamble of the Act, the National Assembly, aware that animals are living beings capable of feeling, suffering and joy, and that it is the moral duty of every human being to respect and ensure the well-being of animals,

recognising the great value that the fauna as a whole and its individual animals represent for humanity, and expressing the intention of Hungary to actively participate in international efforts to protect and spare animals, enacts the Act to ensure the reasonable protection and welfare of animals. The purpose of the Act is to promote the protection of animals, to increase people's sense of responsibility for the humane treatment of animals and to lay down basic rules for the protection of animals.

These were the lines that marked the start of the legal protection of animals in Hungary, which did not, however, also mean criminal law protection. Cruelty to animals was criminalised by Hungarian law in 2004, by which time the social pressure was so great that lawmakers had no choice but to bow to public will. Cruelty to animals was therefore made a punishable offence in the Criminal Code in force at the time. At that time, however, the statement of facts were still found among the offences against public security.

The current Criminal Code has already created a separate criminal category, thus adding cruelty to animals to the list of crimes against environment and nature. The protected legal interest is no longer related to public safety or public peace, but to the social interest in the protection and welfare of animals.

Cruelty to animals has been present in our Criminal Code for 20 years and has undergone significant changes in that time. While the statement of facts originally contained only the basics, it now contains a detailed, qualifying regulation, which makes cruelty to animals punishable by up to 5 years' imprisonment. The development of the statement of facts is, in my view, in direct proportion to social attitudes. In 2004, people were happy that cruelty to animals had finally become a criminal offence at all. Later, however, as more and more cruelty to animals was being discovered through the work of the authorities, the media and animal rights activists, people's sensitivity threshold lowered. I would add that the coronavirus epidemic may also have contributed greatly to people seeing animals more as companions. As stories of cruelty to animals became more widespread, people realised that we humans have a responsibility towards animals. The fact that cruelty to animals is overwhelmingly committed by owners is a factor here, which is even more distasteful to animal lovers who now often see their two- and four-legged friends as family members rather than pets. The attitude of society has therefore contributed greatly to that the historical statement of facts of cruelty to animals has been extended to include more qualified cases and thus more severe penalties. However, is jurisprudence in line with social expectations? This is also what I was examining in my research.

Since all the legal instruments are in place to ensure that both the specific and the general preventive objectives of cruelty to animals are met in the imposition of penalties, the question arises whether they are actually met in practice and, if not, what is the reason.

Finally, how could animal protection be improved and enhanced in criminal law?

Based on the legislation of the past and the present, as well as on domestic and foreign case law, my research shows whether the legal statement of facts of cruelty to animals meets the requirements of the present times, and at the end of my dissertation I also formulate my proposals for codification.

II. Research methods and the structure of the thesis

As I have elaborated earlier, the Hungarian literature on the subject of cruelty to animals is very scarce. Nevertheless, I have tried to use all sources of law related to animals, so in my dissertation I use books, articles, online legal material and of course legislation for my analyses. In these analyses, I will not only review the history and the substantive law, but also make comparisons with foreign case law, examining both Hungarian and foreign legal systems.

In the introductory part of my dissertation, I will discuss why I chose this topic and what questions I am looking to answer in my research.

In the first chapter of my dissertation, I will examine the role of animals in law from the point of view of legal philosophy, law and the definition of natural science. I will describe the taxonomic position of animals, and then how the animal became from being a simple item of property to something special in its own right. I will also share some thoughts from modern legal philosophers through which I can derive the right to life and dignity of animals. This is where I also included a social questionnaire I had prepared.

I will then present both domestic and foreign legal history. I will examine the legal history of animal protection in an international context, since without this it would be impossible to understand the origins of Hungarian animal protection efforts. To do this, I will draw on ancient, medieval and modern doctrines, and show how history has moved from the ancient Egyptian animal cult to the enslavement of animals and then to the criminalisation of animal abuse. Animal trials of the Middle Ages are of particular interest, where animals were tried as humans, and how people of the in the Dark Ages, who had been canonised later, viewed animals. I will conclude this chapter of my thesis with the English and American regulations, which were the cornerstones of the regulations still in force today.

In Hungary, I will examine nature conservation regulation from 1504 onwards, and then move on to the late 1800s, when animal protection first appears as a concept. I will conclude the section on the legal history of Hungary by presenting the previous Criminal Code.

The next and most important part of my thesis is a presentation of the existing animal protection legislation. Although the legal definition of cruelty to animals is not a framework definition, my research has shown that in many cases it is the background legislation itself that gives substance to what conduct ultimately constitutes cruelty to animals. Almost all of the judgments I detail here have dealt with specific provisions of the Animal Protection Act and how to keep

an animal correctly. In addition, we should not forget the lower-level legislation, which in many cases provides specific guidance for different animals. In this chapter of my thesis, I will introduce the Nature and Environment Act, the Animal Protection Act, the Hunting Act and all the legislation that contains animal protection provisions, whether it concerns animal experiments or animals for slaughter.

In the following chapters of my dissertation I will deal exclusively with the criminal law aspects of animal protection, within which the substantive criminal law part is presented in Chapter VI. In this chapter, I describe the offences against the environment and nature, including in detail the offences of cruelty to animals, environmental damage, nature damage, poaching and organising illegal animal fights. I subject the statements of facts to dogmatic analysis and following that I draw conclusions.

The presentation of the substantive law cannot be complete without a presentation of the case law. With this in mind, the next chapter examines domestic case law, presenting 25 cases where the charge was cruelty to animals. During the research I was in a somewhat disadvantageous position in terms of examining the Hungarian case law, because we must not forget the fact that cruelty to animals as a criminal offence has been in the Hungarian legal system for only 20 years, so although I present all the court decisions and decisions of principal issues, which serve as a guideline on the subject, as well as several anonymous judgments, it is not possible to draw far-reaching conclusions about how much and where the case law of cruelty to animals has developed from such a short period of time. However, from an enforcement point of view, it is essential to describe the normative case law in order to know what constitutes abuse in criminal law and in which cases the court has not found cruelty to animals. The cases are very diverse, so I have tried to give practical examples for each species, from fish and birds to dogs, cats and farm animals. I also discuss animal breeders and when it is possible to invoke an emergency. In the second part of the chapter, I will also look at the jurisprudence of nature and environmental damage.

Also in this chapter, I present some of the more offensive habits, pastimes and sports, and examine their animal protection aspects from a legal perspective. In this aspect I also cover force-feeding of goose, hunting, zoos, circuses and the practice of boiling lobsters alive, and answer questions about whether these are legally considered cruelty to animals.

Similarly, I have included the issue and regulation of animal euthanasia in this chapter, as I present practical sources of legislation on this issue.

In the next chapter, I examine the criminological aspects of cruelty to animals. I will use foreign and Hungarian studies as a basis, including American ones. In this chapter, I describe the most common types of conduct and the proportion of different animal species that are abused. I also analyze the statistics from 2018-2022. Since domestic violence and other violent crimes against persons are linked to childhood cruelty to animals, I will present the criminological aspects based on various articles. I will also talk about serial and mass murderers, who were without exception animal abusers, delighting in it. Finally, I write about the forensics' problems.

Since a legal and practical comparison cannot be made without discussing international practice, the next chapter will present the facts and criminal policy of cruelty to animals. In this section, I will present the American, German, English, Italian, Spanish, Portuguese, Slovak, Czech, French, Swedish and Australian statements of facts, including the case law, and then I will also discuss the European Union's regulation, some international conventions and the indicators and research of a world animal welfare organisation, which contain some shocking results and requirements.

In the final chapter of my dissertation, I will formulate my concluding thoughts and my opinion on the current situation as a legal practitioner. I will examine in detail the role of cruelty to animals in Hungarian law and what the social drivers of cruelty to animals might be. Last but not least, I will set out my legislative proposals that could help legislators in a possible codification.

Finally, I will present and list the professional and scientific sources, as well as the legislation and court decisions I have used.

During my research I translated all the studies and legislation from English into Hungarian.

III. Summary of scientific results and potential uses

In my dissertation, my aim was to give as complete and comprehensive a picture as possible of cruelty to animals as a crime. To do this, I have drawn on both the past and the present, and I have also outlined a vision for the future through my codification proposals.

As I have explained earlier, I was not in an easy position during my research, as the Hungarian literature on cruelty to animals is still in its infancy. Only two special animal protection books have been published in many years, one of them just this year. There are only a few domestic articles and studies on cruelty to animals itself, and those only examine one aspect of the issue. I was in a similarly difficult position when examining domestic case law.

As my main goal during this whole time was to enrich the literature with a summarising study of the rules and background legislation specifically on cruelty to animals, I tried to present all sources of law currently available in Hungary. In addition, I presented the legal and penal policies of the countries more developed in the field of animal protection, which was essential for drawing attention to possible shortcomings in Hungarian law.

Is the legal definition of cruelty to animals up to date? From the cases presented in the thesis, it is apparent that the main difference between courts is mainly in their sentencing practices. However, it is common in the case law that courts do not impose a penalty lighter than suspended imprisonment if the cruelty involves several animals or is committed with particular brutality.

Examining international criminal law from the perspective of different countries, it can be concluded that all of them have criminalised cruelty to animals, including the offences that are also included in the Hungarian Criminal Code. In addition, all the countries examined punish the offence in question with imprisonment (or in some cases a fine). The conclusion can be drawn that Hungary has one of the strictest legislation, as there are few other states where cruelty to animals is punishable by up to 5 years' imprisonment.

One of the questions I was looking to answer was: if everything is in place legally to ensure that animal abusers get their just punishment, what could be the reason of that the number of cases of cruelty to animals has not decreased drastically?

Case law is the primary source of an answer to this. Although suspended imprisonment could have a deterrent effect, do the state's claims under criminal law truly prevail like this? I do not rule out the possibility that for many people the very act of being found guilty is a deterrent and

that they deeply regret their actions, but does a suspended prison sentence have the same preventive effect as a detention or a custodial sentence, which are already a real restriction on human freedom? It should also be remembered that imprisonment can last up to 90 days, i.e. 3 months, which is a considerable amount of time for someone who has to spend it in a penal institution. One of the partial results of my research is that the courts no longer go below suspended imprisonment in some of the more serious cases. Thus, cruelty to animals as a criminal offence has achieved its goal, and by 2024 it will no longer be an empty statute, but an applied and enforced one.

The other issue that needed to be examined due to the stagnation in cruelty to animals was the social situation. Because although there is a very high level of support in society for animal protection and therefore for punishing the perpetrators, a section of society still remains unaffected in very poor regions. My criminological research shows that cruelty to animals is highest where poverty and unemployment are also the highest, and where there is significant lack of education. In my work, I have also found that cruelty to animals is less prevalent in cities than in smaller villages and towns, where "common law" often prevails. No matter how loud the media is of proper animal keeping practices if they are not respected in the end. It is still very widespread to tether dogs permanently with various devices such as electric cables, clotheslines and any household utensils that can serve this purpose. I would add that in the vast majority of cases, the dog escapes because it needs to find food and water elsewhere to survive. In this aspect the failure to neuter, which could also prevent unwanted breeding, also emerges as a serious problem. Just like in the case of - otherwise compulsory - vaccinations and chipping, the usual answer regarding it is "*we have no money for that*". Yes, but then why would someone take on the responsibility of keeping an animal if they cannot even afford to support themselves? It is not an option for an animal to be deprived of the food or water it needs to survive. Although more and more such cases are coming to the attention of the authorities, attitudes have not changed much. Perhaps it would be useful to have compulsory lectures and legal education for these groups at municipal level, and to fine these owners for improper keeping. This is the only way to achieve the goal, because so far nothing else has brought drastic change. I would also consider it important to introduce compulsory animal welfare education in primary schools for the above reasons.

During my research I also looked to answers how the criminal law aspects of animal protection could be improved and enhanced. As I have written before, Hungary has one of the most severe criminal statutes in the world, so there is - in my opinion - no flaw in the statute. It could of

course be argued whether cruelty to animals should be punished with the same classification as cruelty to persons (e.g. an injury that takes more than eight days to heal), but other states also do not have such legislation. But what else could be changed, following the example of other countries?

I would consider it important to introduce a ban on keeping animals - as a punishment or as a secondary punishment - as is the case in most of the foreign legislation I have described. I would make it mandatory to impose a penalty that anyone who causes the death of any vertebrate animal by committing cruelty to animals should be banned from keeping animals. I think it is important the criterion of animal death, because I would impose the mandatory nature only for this conduct, and in all other cases I would leave the imposition of the penalty to the discretion of the judicial authorities.

It would be important to penalize the negligent actions, and to correct the offence of cruelty to animals in the more than one animal part. I would also include the zoophilia in the law as a perpetration behavior.

There are also serious problems in the livestock sector. When a crime of this kind is detected, criminal proceedings are launched, yet the animals often remain in the same place because while a single dog or cat can be housed by animal rights activists, each farm animals have to be kept in special conditions, not to mention the fact that they occupy a huge space and often number in the hundreds. Thus, if there is no organisation to take in farm animals, they remain in the same housing conditions, despite the fact that their owner has been prosecuted for the very same. We should definitely find an acceptable solution to this, for example by setting up animal welfare farms on the American model.

It would also be worthwhile to introduce a case law, based on foreign models, that the punishment of community service should be carried out at an animal shelter or animal welfare organisation. Foreign legislation whereby judges can order defendants to pay a certain amount of money to animal shelters, animal protection organisations or breed rescue organisations as a special kind of fine is also to be supported in this context.

Finally, I think it is important for Hungary to create a large public body specifically dedicated to animal protection. Why? Because animal protection in Hungary has now reached a level due to which it deserves to be independent.

As such, as a result of my research, I have been able to draw the above conclusions and have made my codification proposals on the basis of these conclusions. The main aim of my dissertation was to create a unified literature on cruelty to animals, in addition to ancient crimes such as theft and homicide, which could be of help to both legislators and law enforcers.

IV. List of publications in the field of this research

ZSUZSANNA RÉKA FEDOR: The criminal law aspects of animal protection - with special regard to the legal status of cruelty to animals, Talent POINT: Keeping order along values, Pázmány Press, Budapest, 2015., pp. 149-168.

ZSUZSANNA RÉKA FEDOR: Animals on trial, Ars Boni law journal, Budapest, 24 Jan 2022.

ZSUZSANNA RÉKA FEDOR: *An overview of the criminal law history of animal protection in Hungary in the new Civil Code*, Ügyészek Lapja, 2024/4., Budapest (date of acceptance statement: 16 Jun 2024.)

ZSUZSANNA RÉKA FEDOR: *The right to life of animals in the light of criminal protection*, Ügyészségi Szemle, 2024/2., Budapest (date of acceptance statement: 16 Jun 2024.)

Other publications

ZSUZSANNA RÉKA FEDOR: Criminal and medical aspects of euthanasia, Ars Boni law journal, Budapest, 03 Mar 2017.

VIKTOR BÉRCES - ZSUZSANNA RÉKA FEDOR: The conditions for the application of the prosecution, Ügyészségi Szemle, 2018/4, Budapest, pp. 6-17.

ZSUZSANNA RÉKA FEDOR: La sussidiarietà orizzontale in Europa: in caso dell'Ungheria, Labsus c. Italian law journal, 26 Nov 2022.