

*Vári Vince, PhD**

UPS Faculty of Law Enforcement, Department of Criminal Procedure Law

ORCID: 0000-0001-6416-1645

ANIMALS AS OBJECTS AND SUBJECTS OF ENVIRONMENTAL CRIMINAL AND MISDEMEANOR LAW, WITH SPECIAL REFERENCE TO DOGS**

ABSTRACT: The protection of animals plays a crucial role in the legal system related to environmental protection. Act C of 2012, effective from July 1, 2013, includes a dedicated chapter on protecting the environment and wildlife. Hungarian regulations on environmental liability encompass civil, administrative, misdemeanor, and criminal liability. This paper aims to present the fundamental legal aspects of protecting animals within environmental law. It focuses on legislation and practical issues falling under penal law, particularly concerning dogs. Environmental law regarding dogs is two-fold. Firstly, it protects animals from abusive behavior, whether physical or mental. Secondly, it involves situations where dogs become a part of environmental law, such as when they are released into public areas without proper supervision. The clear delineation of specific acts poses a challenge for law enforcement, emphasizing the need to clarify the legislative environment and its practical aspects.

Keywords: animal protection, environmental protection, liability for violation of rules, endangering with a dog, animal cruelty

* e-mail: vari.vince@uni-nke.hu, pol.lt.col., associate professor.

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INTRODUCTION

The protection of animals has taken on a serious and decisive role in the system related to nature and the environment as legal objects in Hungary. It is, in essence, one of the important pillars of environmental and nature protection. Act C of 2012 on the Hungarian Criminal Code (Hereinafter: Btk.) dedicates a separate chapter to the protection of the environment and nature. The provisions under this chapter are diverse, but they share common characteristics that justify their grouping in a single chapter. A common characteristic is the protection of the environment and nature, including their elements (such as environmental pollution and environmental damage). Regarding its fundamental legal aspects, as emphasized by the 28/1994. (V. 20.) AB (Constitutional Court) Decision, the right to a healthy environment is not a fundamental right of individuals, but it is also not merely a constitutional task or state goal¹, where the state freely decides what means it uses in order to protect it.²

Placing the crime of animal cruelty in the chapter on environmental protection is justified by the shared legal object; the welfare of animals and their humane treatment. This demonstrates a strong connection to protecting plants and animals from environmental and natural damage. The same rationale justifies the creation of the new crime of poaching. When we talk about nature conservation, we primarily refer to wild animals and we classify them within a specific range of offenses. However, the expansion of environmental law includes many types of criminal behavior within its regulatory scope, not limited to these offenses alone.

It should be noted that the dog, as a pet, is not subject to the regulations concerning environmental damage affecting wild animals, as it primarily has real property value rather than ideological value, especially if it is a rare and special breed. On the contrary, the dog, as an animal, frequently appears as a specific object of a criminal offense, for example in cases of animal cruelty. The regulation of criminal law and violations of rules is closely related to public administration standards and the framework legislation that constitutes it. In light of this, the complexity of environmental law is reflected in the multifaceted nature of liability,³ which can be clearly observed in the

¹ Frigyer, L., Mátyás, Sz. (2017). A környezet és a természet elleni bűncselekmények hazai szabályozásának érdekességei. *Hadtudományi Szemle*, 10 (2), 415.

² Fodor, L. (2007). A környezethez való jog dogmatikája napjaink kihívásai tükrében. *Miskolci Jogi Szemle*, 18.

³ Farkasné, H. H. (2015). A környezeti bűncselekmények joganyagáról. In: Gaál, Gyula; Hautzinger, Zoltán (Ed.) *Modernkori veszélyek rendészeti aspektusai*, Pécs, Magyarország: Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoport (2015) 157–160.

regulations related to waste management or in the violations related to dogs discussed here.

The responsibility of the animal keeper is increased, and it applies not only to damages resulting from improper care but also to the manner and quality of how the animal is kept. From this perspective, the dog is a good example of an animal that can be both the victim (the object) of environmental crimes and its instrument or subject, which can also be connected to additional careless or intentional, but certainly illegal, human behavior. Such actions may endanger the safety of others, disturb others' peace of mind, or cause injury or damage. When it comes to dogs, protection through environmental law is two-fold: on the one hand, it protects animals from behavior that constitutes physical or mental abuse or complete neglect of the duty of care. However, even in such cases, it is necessary to identify and focus on the specific behaviors that warrant criminal prosecution. On the other hand, when a dog under supervision is released into a public area and remains outside the control of the person assigned to supervise it, the responsibility of the owner is increased, and under certain criteria, a simple violation of the law by breach of duty turns into an infringement.

Such criteria could include allowing a dog to roam or failing to repair a fence that encloses the area designated for the dog, which allows it to escape. However, intentional abandonment of a dog already constitutes the criminal offense of animal cruelty, where the owner is also liable for the actual damage and injury caused by the dog – as mentioned earlier. In many cases, accurately identifying these types of violations and deciding on the necessary actions to address them pose significant challenges for law enforcement. As is often the case with environmental violations, the assessment of these acts is not well-established in Hungary, and in some matters, the practice of the acting authorities is not uniform.⁴

MATERIAL AND METHODOLOGY

This research focused on examining the criminal law regulations related to the treatment of animals and the findings from investigative authorities. Internal police materials are considered crucial for this study. Two key documents we referenced: „Information on Animals Involved in Environmental Damage” issued by the ORFK, Directorate General of Crime, Department

⁴ Tilki, K. (2004). A környezetkárosítás és természetkárosítás jogalkalmazói gyakorlata, *Ügyészek lapja*, 41. 67-70.

of Crime in 2022, and „Guidance on Endangering with a Dog, Disturbing the Peace, and Offenses against the Public Order” prepared by the Directorate General of Police, Administrative Police Department of the ORFK in 2022. Statistical data on offenses related to endangering dogs, administrative offenses, and the crime of animal cruelty were also analyzed. Based on the findings, the aim was to identify criminal and law enforcement indicators relevant to the crime of animal cruelty toward dogs and to the response of law enforcement to offenses involving dogs.

The research is based on the premise that addressing dog-related offenses is complex, presenting challenges for law enforcement due to the increasing number of offenses. Therefore, establishing a transparent legal environment and expanding legal protections are crucial, albeit time-consuming. Furthermore, the research shows that environmental and nature protection has been given lower priority in law enforcement activities compared to traditional criminal offenses such as property and drug-related offenses, leading to fewer and lower-quality interventions.

ANIMAL PROTECTION IN ENVIRONMENTAL LAW: LEGAL STANDARDS AND PRACTICE IN HUNGARY

Environmental crime, including criminal offenses involving endangered species of flora and fauna, is broad and encompasses any illegal action that harms the environment (such as water, air, soil, climate, plant, and animal life).⁵ Protecting animals is only one element, but it is a defining aspect of environmental law. The criminal offense of animal cruelty in Hungary falls under environmental law, specifically within chapter on protecting the environment and wildlife. The regulation is very similar to the Slovenian system, which, like the Hungarian one, defines the protected legal objects of environmental protection, which are safeguarded through criminal law through independent criminal provisions. All criminal offenses of this type are of a blanket nature because other regulations outside of criminal law primarily govern them.⁶

In Hungary, the number of offenses involving animals showed a steadily decreasing trend between 2005 and 2018, mainly linked to an increase in

⁵ Lažetic, G., Mujoska-Trpevska, E. (2024). Ekologija i kaznenopravni instrumenti zaštite, Norma i praksa Republike Severne Makedonije. *Glasnik of the Bar Association of Vojvodina*, 96(1), 34.

⁶ Jakulin, V. (2024). Krivična dela protiv životne sredine, prostora i prirodnih dobara u Krivičnom zakoniku Republike Slovenije. *Glasnik of the Bar Association of Vojvodina*, 96(1). 79.

latency and the authorities' responsiveness. The most common criminal offense is the smuggling of specimens of protected species, with airports being the primary crime scene due to the significant risk of detection. In criminal law, the species of living organisms that are the subject of the offense of environmental damage (Hereinafter: species) is defined in Section 242 (4) of the Btk., which describes it as follows:

- Species of a living organism in any form or stage of development;
- Hybrids of living organisms propagated artificially or otherwise;
- Derivatives of a living organism, including dead specimens and any parts and derivatives thereof or of the species of a living organism, and any goods or products made from any of the above, or containing any component that originates from any of the above.

The concept of environmental damage is a framework definition with specific legislation giving more detailed descriptions:

1. Act LIII of 1996 on Nature Conservation (Hereinafter: Tvtv.)⁷
2. Regulation (EC) No 338/97, as amended by the Council Regulation of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade therein⁸
3. Act XXXV of 2000 on Plant Protection⁹
4. Ministry of Agriculture Decree No 13/2001 (9 May 2001) on protected and specially protected plant and animal species, on specially protected caves, and the publication of plant and animal species of conservation importance in the European Community (Hereinafter: KöM Decree)
5. Government Decree No. 348/2006 (XII. 23.) on the detailed rules for the protection, keeping, presentation, and utilization of protected animal species
6. Government Decree No. 67/1998 (IV. 3.) on restrictions and prohibitions on protected and specially protected communities
7. Government Decree No. 275/2004 (X. 8.) on sites of European Community importance for nature conservation

The object of the offense is defined by law based on background legislation, particularly the definitions in the Tvtv. Specifically, it includes:

- a) Specimens of highly protected organisms
 - 1) The list of these protected species is set out in Annex 2 to the Decree on Protected and Specially Protected Species of Flora and Fauna, on Specially Protected Caves, and on the Scope of Special Protection for Caves.

⁷ Act LIII of 1996 on the Protection of Nature, *Hungarian Gazette* No. 12/1996.

⁸ Council of the European Union, Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein

⁹ Act XXXV of 2000 on Plant Protection, *Hungarian Gazette* No. 42/2000.

2) Specimens of protected organisms or plant and animal species of conservation importance in the European Union.

In contrast to the previous provision, offenses involving specimens of protected organisms are only considered criminal if the total value of the specimens exceeds the minimum value in forints of the protected species as defined in a separate act. The protected plant and animal species and the monetary value of their specimens are listed in Annexes 1 and 2 to the KöM Decree. The calculation method is also set out in the same Annex: the minimum value for protected plants and animals is HUF 100,000. For protected species, the value of individuals is below HUF 100,000. However, the unlawful taking of several protected specimens becomes a criminal offense if the total value of the specimens reaches or exceeds HUF 100,000. (for example, plucking 20 stems of a protected forest flower with an individual value of HUF 5,000 already constitutes a criminal offense).

b) Specimens of a living organism covered by Annexes A and B to Regulation (EC) No 338/97

The concept of a „specimen” is defined in the Tvtv. in the context of the incorporated interpretative provision, taking into account the background legislation. The purpose of this interpretative provision is to resolve disputes over the interpretation of the concepts of „specimen” and „derivative.” According to this interpretation, the concept of a specimen includes all developmental stages, forms, and states of living organisms, such as seeds, eggs, ova, etc. The concept of an individual also includes individuals resulting from crosses and interbreeding of living organisms since hybrids of protected and specially protected plant species and animal species are considered protected and specially protected species under the Act. The term „specimen” also includes derivatives, any part of a living or dead organism, and products or preparations made from or containing ingredients derived from any of these.

The term “living organism” in current law is crucial in our collective efforts to protect species and habitats. However, it cannot itself constitute an element of an offense, since it refers to species or subspecies as general categories, which cannot be the object of a crime (for example, it is not possible to trade in species or subspecies as abstract entities).

An important criterion is how the offense is committed, i.e., it must be carried out “unlawfully.” This definition includes:

- Without a licence,
- Exceeding the scope of the license,
- Acts carried out in a prohibited manner.

According to Article 43 (2) of the Tvtv., a license from the nature conservation authority is required, among other things, for (b) the collection,

capture, killing, and possession of specimens of a protected species; (d) dressing, taxidermy, and possession of taxidermy specimens; (h) exchange or sale of specimens; (i) export, import or transit of specimens. Licensing is subject to strict conditions, so in most cases, it may be presumed that individuals are without a license, for example, in cases involving the destruction of a protected animal, the keeping of an animal or a taxidermy specimen for hobby or commercial purposes, or the sale or purchase of an animal or taxidermy specimen.

If the license was not properly issued to the holder or is not recorded in the records of the issuing body, the law serves as a crucial tool in preventing other offenses, such as abuse of authority, bribery, forgery of documents, etc., from occurring. ses, including

- Obtaining,
- Possession,
- Placing on the market,
- Import into or export from the country, transfer within the country,
- Trafficking,
- Destruction,
- Damage.

The law protects Natura 2000 sites as a separate element. This category was introduced into Hungarian law by Government Decree 275/2004 on sites of European Community importance for nature conservation. According to Parliament Resolution 132/2003 on the National Environmental Protection Programme for 2003–2008, compliance with EU rules entails a whole new set of tasks for nature conservation. Under Directive 79/409/EEC on the protection of wild birds (the Birds Directive) and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), sites of Community importance, the Natura 2000 network of sites, must be designated. The legislation also ensures the protection of these sites. The framework directive is supported by underlying national and international legislation. The abovementioned rules are important provisions, but their list is not exhaustive. Hungarian legislation follows a mixed model, supplemented by administrative decrees. Determining whether an offense has been committed depends on the degree of administrative protection in place and whether the value of the affected object meets the threshold for criminal prosecution. Therefore, criminal law is closely connected to administrative regulations, and merely violating an administrative rule is insufficient; criminal liability must be specifically established by law. Furthermore, compliance with administrative regulations does not exempt one from criminal liability.¹⁰

¹⁰ Várhegyi, K. (2013) A környezeti büntetőjog bírósági gyakorlata különös tekintettel a természetkárosítás büntette elemzésének tapasztalatai alapján. *A bírósági szervezetrendszer*

In cases involving criminal offenses related to protected species, there is close cooperation between investigating and nature conservation authorities, primarily for animal protection. The police can request data from nature conservation authorities' registers as part of digitization and e-investigation processes. Only animal protection professionals can provide suitable housing and care for animals involved in offenses. The main goal is to ensure their safety as quickly as possible, even after legal proceedings.

The majority of criminal proceedings are initiated by the nature conservation authority, which is responsible for checking licences for keeping protected species, imposing fines, and confiscating specimens. According to Article 80(1)(e) of the Tvtv., an environmental fine is imposed on anyone conducting activities requiring a license without proper authorization.

If the police initiate proceedings, they must inform the nature conservation authority and provide necessary information and evidence to conduct official proceedings. The authority may impose fines separately from ongoing criminal proceedings.

Under Article 78c(4) of the Tvtv., the nature conservation authority can seize and confiscate illegally acquired protected natural values not owned by the state. If the state owns the protected natural value, it will be sealed and preserved by the nature conservation authority until the decision of the competent authority exercising the state's ownership rights.

In investigating of the crime of environmental damage under Article 242 of the Btk., the investigating authority must document the location of the protected or specially protected specimen that is the subject of the crime. The record should include information on the specimen, circumstances of its discovery, and related licences.

The competent national park directorate is obligated to safeguard live animals seized during criminal proceedings related to suspected environmental damage. If a protected or specially protected animal has been seized, the investigating authority must act in accordance with the Tvtv.¹¹

jogalkalmazásának javítása az ítélkezési tevékenység hatékonyságának fokozása érdekében” megnevezésű ÁROP-2.2.16-2012-2012-0005 azonosító jelű pályázat. 14.

¹¹ Information about animals affected by damage to nature. (2022). National Police Headquarters, Directorate General of Crime, Department of Crime.

**THE DOG AS THE SUBJECT OR INSTRUMENT OF AN OFFENSE
Endangering With A Dog And Violations Of The Rules
On The Keeping Of Animals**

Dogs are not subject to the basic provisions concerning protected species because they are neither protected nor highly protected species. However, as an animal that lives closely with humans, they play a significant role in environmental law. While they are not listed under a separate offense in the chapter on environmental crime, they are often involved in criminal offenses in practice. In cases of general offenses, the responsibility of the keeper, owner, or master establishes the dog as the subject of the offense. This usually implies causing damage or personal injury, often linked to negligent and unintentional liability. Investigating such cases is a significant part of legal procedures. There are also cases where the intentional conduct of the dog owner results in injury or damage. In instances of criminal damage, the offense is classified based on the value of the damage caused. Furthermore, if a dog attacks and causes injury due to the deliberate behavior of the owner, it may be considered a criminal offense of intentional assault, with the severity of the damage determining the classification of the offense. Therefore, failing to exercise due care and attention in keeping animals and causing bodily harm to another person may result in criminal penalties based on the severity of the injury. If a dog left in a public area causes a traffic accident resulting in personal damage that takes more than eight days to heal, it could be considered causing grievous bodily harm.

The following legislation applies:

1. Act II of 2012 on Administrative Offenses, Administrative Proceedings and the Administrative Offenses Registration System (Hereinafter: Szabs. tv.);¹²

2. Home Office Decree No. 22/2012 (IV. 13.) on the provisions related to the implementation of Act II of 2012 on Administrative Offenses, Administrative Proceedings and the Administrative Offenses Registration System;

3. Act XXXIV of 1994 on the Police (Rtv.);¹³

4. Act C of 2012 on the Criminal Code (Btk.);¹⁴

5. Act XXVIII of 1998 on the Protection and Welfare of Animals (Hereinafter: Ávtv.);¹⁵

¹² Act II of 2012 on Administrative Offenses, Administrative Proceedings and the Administrative Offenses Registration System, *Hungarian Gazette* No. 44/2012.

¹³ Act XXXIV of 1994 on the Police, *Hungarian Gazette* No. 17/1994.

¹⁴ Act C of 2012 on the Criminal Code, *Hungarian Gazette* No. 92/2012.

¹⁵ Act XXVIII of 1998 on the Protection and Welfare of Animals, *Hungarian Gazette* No. 28/1998.

6. Government Decree No. 41/2010 (II. 26.) on the keeping and trading in pet animals (Hereinafter: Animal Husbandry Decree);

7. Government Decree No 244/1998 (XII. 31.) on animal protection fines (Hereinafter: Animal Protection Decree)

8. Government Decree No. 383/2016 (XII. 2.) on the designation of bodies performing the tasks of agricultural authorities and administrations (Hereinafter: Kij. R.)

9. Act V of 2013 on the Civil Code (Civil Code Act)¹⁶

Under Article 164 of the Btk., if a dog that has been let loose bites someone due to improper handling, the legal consequences depend on the severity of the injury. If the person suffers a minor bodily injury that heals within eight days, only private prosecution is allowed. The legal consequences may differ if the injury takes more than eight days to heal.¹⁷ Article 359 of the Btk. states that a person who violates the safety requirements prescribed by law for keeping dangerous animals or dogs may be held liable for a criminal offense. The distinction between the two crimes depends on the breed of the dog and whether it is classified as dangerous.

The rules of the Civil Code govern damage caused by a dog. Under the Civil Code, physical objects that can be taken into possession are considered property. The rules applicable to chattels also apply to animals, subject to the statutory provisions laying down derogations according to their nature. According to article 6:562 of the Civil Code, the keeper of an animal is liable for any damage caused while keeping the animal unless he proves that he is not responsible for the damage.

After addressing civil liability, let us turn to the liability for misdemeanors and administrative liability for dogs. The offense of endangering with a dog, as outlined in article 193 of Szabs. tv., includes the following provisions:

1) A person who a) lets a dog in his care enter a public space or roam freely; b) lets a dog in his care, other than a hunting dog or a truffle-hunting dog, be off-leash or roam without a leash in a natural, protected natural, or hunting area; c) transports a dog in his care, other than an assistance dog, on public transport without a muzzle and a leash; d) lets or brings a dog in his care, other than an assistance dog, into a store selling food (other than a catering facility), into a public bathing area, or into a playground; commits an offense.

¹⁶ Act V of 2013 on the Civil Code, *Hungarian Gazette* No. 2222/2013.

¹⁷ Farkasné, H. H. (2017): Állatok a büntetőeljárásban: „állati” és állatok elleni bűnök. In: Gaál, Gyula; Hautzinger, Zoltán (Ed.) *Szent Lászlótól a modernkori magyar rendészettudományig*. Pécs, Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoport, 185.

2) Any person who keeps a dangerous dog in an unenclosed place or fails to place an appropriate warning sign at the entrance to a house (dwelling) commits an offense.

2a) For this section, an assistance dog is an assistance dog as defined in the Regulation on the Rules for the Training, Testing, and Suitability of Assistance Dogs.

3) For an offense as defined in paragraphs 1) and 2), a public area supervisor, a nature conservation guard in natural and protected natural areas, a municipal nature conservation guard in protected natural areas of local importance, and a field guard may also impose an on-the-spot fine.

What kind of illegal behavior is covered by this provision?

a) leaving a dog unattended on public land or letting it wander about in the municipality

The first offense under a) is committed if a dog is released into the public area and is found to be outside the control and supervision of the person responsible for it. The offender commits an offense through active, hands-on behavior – by releasing the dog into a public area without supervision (e.g., letting the dog run).¹⁸

The second type – letting a dog roam – occurs when the person in charge of a dog knows that it has wandered out into a public space but leaves it there, resigning himself to the fact that the animal is roaming in public unsupervised. The offender commits this offense by passively allowing the dog to remain in public unsupervised (e.g., does not look for the dog that has escaped from their property).

This offense is only committed within the municipality. If the same crime is committed outside the city, an administrative (animal welfare) fine may be imposed on the person who:

- In a natural or protected area or a hunting area, lets a dog off its leash or allows it to wander out into a public space,
- Allows a dog on public transport without a muzzle and a leash, except for assistance dogs,
- Allows or takes a dog, other than an assistance dog, into a shop that sells food, a public bathing area, or a playground, except in a catering establishment,
- Keeps a dangerous dog in an unenclosed place or does not place an appropriate warning sign at the entrance to the place of residence.

¹⁸ Jámor, A. (2014). A szabálysértési jog változásai, különös tekintettel a veszélyeztetés kutyával szabálysértési tényállásra. In: Koncz, István; Szova, Ilona (Ed.) *Hiteles(ebb) tudományos prezentációk II. köt.: PEME VIII. Ph.D. – Konferencia*. Budapest, Magyarország: Professzorok az Európai Magyarországért Egyesület, 68–74.

In the case of a potentially dangerous or large animal, displaying a warning sign is compulsory, and the person keeping the animal may be held liable for an offense if they fail to do so. Dangerous dogs must be kept securely confined, such as in a closed cage within a yard.

If a dangerous dog poses a threat to another person's life or physical well-being, no criminal offense is committed, and the dog's owner is liable to an environmental fine.

The most common and typical form of the offense of endangering with a dog is defined in Section 193(1)(a) of the Szabs tv. This act may only take place within the territory of a municipality. It involves the voluntary release of a dog into a public area, where the dog is left unsupervised by the person responsible for it (referred to as 'unattended release into public areas'). Additionally, the offense includes situations where the person who has custody of the animal allows it to roam, leaving the animal to wander apparently unattended without any owner.

In practice, the offense may also occur when a dog escapes and wanders off within the municipality due to a failure to comply with the animal's husbandry obligations. If the person in charge of the dog, who is aware that the dog had wandered off before, fails to take necessary action to prevent it from recurring, they may be liable for the offense and may face an animal protection fine. These different acts leading to liability (allowing the animal to escape and allowing it to stray) are distinct and separate in time, so the principle of the prohibition of double jeopardy is not violated.

Beyond the specific infringements previously discussed, there is a much wider range of offenses subject to administrative fines. When an administrative violation occurs, the police officer must draw up a detailed report, which must be sent to the competent district or metropolitan district office for administrative proceedings – the imposition of an animal protection fine. Under Article 2(1)(h) of the Act, the scope extends to pet animals. According to Article 5(1), the animal's keeper must ensure that it is housed properly and safely, receives appropriate care, and is prevented from escaping.

According to Article 43(1) and (2) of the Ávtv., any person who, by his action or omission, violates or fails to comply with the provisions of a law or administrative decision concerning the protection and welfare of animals shall be liable to an animal protection fine commensurate with the seriousness and repetition of his conduct and, in particular, the nature and duration of the damage caused to the animal. The authority dealing with violations of the rules related to animal husbandry is the Pest County Government Office, county government office, district/capital district office (Hereinafter: office), and the regional nature conservation authority is the designated animal protection authority (Office).

Under the Animal Husbandry Decree:

Article 15 (1) states that animals must be kept in a manner that does not jeopardize the safety of other animals, except for live animals intended for feeding predatory animals or humans.

Article 17 (1) Dogs must be kept on a leash in public places, except in areas designated for dogs. In public areas, a dog may only be led by a person capable of controlling, handling, and restraining the dog.

(2) In public places, the dog's owner must ensure that it does not endanger other animals or humans by biting them.

(3) The use of a muzzle to enforce the provisions of paragraph (2) shall only be used if the dog is known to exhibit typically aggressive behavior, unless the use of a muzzle is required by law, government decree, or ministerial order.

In the case of an administrative offense, under the Kij. R., the procedure must be initiated with the veterinary authority as defined in Annex 3 to the R., according to Article 3(3). Under Articles 2(1) and (2) of the Animal Protection Decree, the basic acceptable amount is HUF 15,000. In determining the penalty amount, the Office multiplies the introductory amount of the fine by the multiplying factors set out in Annexes 1 to 4, depending on the circumstances of the offense. The Office shall impose an animal protection fine if the offender has endangered the health or physical integrity of a human being [Annex 3, point 1. g] and if the offender has not taken adequate care to prevent the escape of the animal [Annex 4, point 1. h)].

The most typical administrative offenses in practice are:

- Failing to prevent a dog from escaping due to inadequate fencing or leaving a gate open, where the responsible person is unaware of the dog's escape, is considered an administrative offense.
- If the person responsible for the dog is aware that it has escaped but actively tries to retrieve the dog, it is still considered an administrative offense.
- If the person responsible for the dog knows it has escaped but deliberately allows it to flee or does not take any action, it is an administrative offense in a municipality and a misdemeanor outside the city.
- If an animal that has escaped endangers the health or physical well-being of a person (both within and outside the municipality), the owner is subject to an administrative fine.
- If a dog escapes onto the road and causes a traffic accident resulting in material damage, it is not a traffic offense but an administrative offense by the dog owner for endangering another person's life or physical well-being.
- If a dog on a leash in a public place bites someone, causing an injury that heals within eight days, an administrative fine can be imposed on the person

handling the dog for endangering others. If the injury takes more than eight days to heal, an investigation for negligently causing bodily harm may be initiated.

- If a dog that has escaped causes a road traffic accident resulting in serious injury, the person in charge of the dog may be held liable for negligently causing severe bodily injury, not for a traffic offense.
- If a dog endangers the physical well-being of another person in a fenced private area, such as by attacking or biting and causing injuries that heal within eight days, an animal control fine may be imposed.¹⁹

THE DOG AS THE OBJECT OF THE OFFENSE

Animal cruelty

The last few decades have seen a partial, positive shift in the legal protection of animals, particularly domesticated animals. There is a growing awareness of the need to free living beings from suffering and to conserve natural resources. The slow but visible spread of ethical consumption reflects society's desire to see less cruelty. Nevertheless, culture is selective, speaking out only about particular animal suffering: on the one hand, it condemns all forms of animal cruelty, and on the other, it is reluctant to give up the benefits and goods gained through the use of animals.²⁰

„In cases of blatant animal cruelty, the immediate apprehension of the perpetrator(s) and exemplary punishment such as imprisonment (if not the death penalty [!], by the ancient principle of 'an eye for an eye, a tooth for a tooth') are demanded.”²¹

Unfortunately, dogs are often the victims of animal cruelty. Sentencing practices have also changed in recent years, with offenders rightly fearing the imposition of a custodial sentence. As seen in previous cases, successful prosecutions require cooperation and a good working relationship with public authorities and NGOs.

¹⁹ Jámbor, A. (2014). A szabálysértési jog változásai, különös tekintettel a veszélyeztetés kutyával szabálysértési tényállásra. In: Koncz, István; Szova, Ilona (Ed.) *Hiteles(ebb) tudományos prezentációk II. köt.: PEME VIII. Ph.D. – Konferencia*. Budapest, Magyarország: Professzorok az Európai Magyarorszáért Egyesület, 68–74.

²⁰ Vetter, Sz., Ózsvári, L. (2021). Az állatkínzás szabályozása gazdasági és társadalmi mutatók tükrében. *Magyar Tudomány*. 182(5). 663-675.

²¹ Ambrus, I. (2022). Az állatkínzás újraszabályozása a változó társadalmi felfogás tükrében. In: Gárdos, Orosz Fruzsina (Ed.) *A magyar jogrendszer rezilienciája 2010 – 2020*. Budapest, Magyarország: ORAC Kiadó Kft. 515.

It is precisely because of the increasing social pressure that the previous rules have been amended and tightened up, particularly by redefining and extending the scope of qualified cases from January 1, 2022. As Article 244(1) of the Btk. states that anyone who commits animal cruelty:

a) Unjustifiably ill-treats a vertebrate animal or unjustifiably treats a vertebrate animal in a manner likely to cause permanent damage to its health or its destruction,

b) Abandons, neglects, or leaves unprotected any vertebrate or dangerous animal,

shall be guilty of a misdemeanor punishable by imprisonment for up to two years.

A more severe penalty shall be imposed on anyone who causes particular suffering to the animal, commits the offense on more than one animal, or commits the offense publicly. The consequences are also more severe for anyone who commits the offense under a ban or as a repeat offender. Even harsher penalties apply to offenses involving poison or bait to multiple animals and particular repeat offenses. A new form of crime that should be highlighted is the offense of breeding more than ten pet animals for profit without exercising the care of a good owner. The offense of animal cruelty is not a framework offense. However, the Ávtv. is the background legislation, and the offense is defined by criminal law. This is indicated by the “Care of a Good Owner”, defined in Section 3(8) of the Ávtv, as part of the elements of animal cruelty.²²

The elements of animal cruelty are based on the concept of abuse and not on the infliction of physical pain because the law does not want to link the criminal sanction to the feeling or effect on the animal but to the perpetrator’s conduct. Not all types of physical or psychological harm can be considered animal cruelty; for example, physical discipline for education or training may be necessary. However, even in this case, it is essential to prioritize and determine which means are punishable and which are not. Unjustified treatment should include any physical interference or omission that does not fall within the scope of acceptable practices but should also be assessed in terms of the nature of the harm and the suffering of the animal. To be punishable, it is not necessary for the offender to take the animal’s life or for the animal to suffer permanent damage to its health; it is enough for the offender’s act to be capable of doing so.

Therefore, causing the death of an animal is not a separate offense – it is just an aggravating factor. According to the Ávtv., an animal’s life may be

²² Ambrus, I. (2022). Az állatkínzás újraszabályozása a változó társadalmi felfogás tükrében. In: Gárdos, Orosz Fruzsina (Ed.) *A magyar jogrendszer rezilienciája 2010–2020*. Budapest, Magyarország: ORAC Kiadó Kft., 517.

lawfully ended for acceptable reasons or circumstances. Such acceptable reasons include, in particular, slaughtering animals for food, producing fur from animals traditionally kept for this purpose, herd control, addressing incurable diseases or injuries, controlling and protecting against infectious diseases, eradicating pests, preventing attacks that cannot be avoided by other means, and conducting scientific research.²³ In these cases, such actions do not constitute the offense of animal cruelty.

Therefore, the question of what constitutes improper husbandry is always examined on a case-by-case basis, which often causes problems in determining whether criminal liability exists because the keeper's behavior may not directly cause the harmful consequences.²⁴ If the keeper fails to fulfill the duty of care required by the Act, the appropriate authority exercises its administrative power to impose fines, as mentioned above. If the perpetrator intends to cause the animal pain, distress, or suffering, and the injuries are not the result of neglect related to the keeping of the animal, such as improper feeding or restraint of movement, the offense of animal cruelty is established. In the case of the second point, however, the mere fact that the animal is abandoned or driven away by its owner because he no longer wishes to care for it is sufficient to constitute the offense of cruelty, in which case the mere fact of the animal being found abandoned is adequate. The offender cannot defend himself by claiming that the animal ran away.

CONCLUSION

The range of offenses relating to the protection of animals and, thus, nature conservation is highly complex in Hungarian law. This is due to the framework nature of the protected subject matter and the complexity of the legal liability regime. By presenting the regulation of dogs as a kind of „veterinarian's horse,”²⁵ the aim was to illustrate how Hungary's civil, administrative, criminal, and misdemeanor liability systems coexist and how various types of legislation can define an environmental offense. In this confusing legal environment, the policeman in the street is faced with a challenging task if he

²³ Schreiter, K., Petréttei, D., Tilki, K., (2021) In. Petréttei Dávid (Ed.). *Támpontok az állatkínzás nyomozásához*. Budapest, Magyarország: Ludovika Egyetemi Kiadó.

²⁴ Tilki, K. (2022). Egy állatkínzással kapcsolatos jogeset során felvetődött kérdések. *Ügyészek Lapja*, 29 (1–2), 103–109.

²⁵ According to a well-known anecdote, it is customary to compare a phenomenon or institution to a veterinarian's horse if all imaginable defects, diseases, and symptoms can be detected.

wants to determine the exact violation and its correct classification, particularly the scope and system of the necessary actions and steps that he must take. We can agree that it is essential that the application of criminal law in cases of environmental offenses is indeed an *ultima ratio*²⁶, i.e., criminal law is the last resort that is used in exceptional cases.²⁷ However, this should not mean that the authorities' response remains low and inadequate due to lacking capacity and knowledge. This is especially true for the police, who are on the 'front' line regarding awareness and detection of nature-related violations. There is no doubt, however, that gradualism must be respected and that legislators should not respond immediately to minor offenses with criminal repression but should prevent them by employing administrative or infringement procedures.²⁸ As research has shown, if the legislator is too strict, the deterrent effect of the legislation does not work after a certain level of strictness. For example, if even the mildest environmental offense were punishable by life imprisonment, it would not lead to greater compliance with environmental regulations, nor would it reduce the number of environmental crimes. This principle applies to all other crimes as well; moreover, it is neither practical nor cost-effective to establish an extensive criminal justice apparatus to deal with every minor infringement. Unfortunately, this is not always the case, as the length and complexity of the various procedures are not commensurate with the nature of the offense. Still, I believe that increasing specialization in the investigating authority, i.e., setting up an „environmental police” with its powers and jurisdiction or an „environmental prosecutor's office,” could significantly increase the efficiency of detection and a „larger” and „more effective” police presence could perhaps reduce the number of undetected offenses. It would also force people to consider the serious possibility of being prosecuted for harming the environment and nature.

²⁶ Köhalmi, L. (2017): A környezet és a természet elleni bűncselekmények. In A negyedik magyar büntetőkódex. MTA Társadalomtudományi Kutatóközpont. 327.

²⁷ Amberg, E. (2020). *Büntetőjog mint ultima ratio*. Budapest, Magyarország: Nemzeti Közszerkesztési Intézet, 1–115.

²⁸ Fodor, L. (2005). A hatékonyság kérdése és a végrehajtási deficit jelensége a környezetvédelmi szabályozásban” In: A környezetvédelmi szabályozás elmélete és gyakorlata – A környezetvédelmi jog és igazgatás hatékonyságának aktuális kérdései. In: (Ed. Fodor László). *Debreceni Konferenciák III., Debreceni Egyetem Állam- és Jogtudományi Kar*, Debrecen, 2005. 17–51.

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