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Tasks of the Municipality in the Field of Humane Protection of Animals*

Zadania gminy z zakresu humanitarnej ochrony zwierząt

ABSTRACT

The article is of a scientific and research nature, and the author's conclusions and thoughts are based on the interpretation of legal provisions and the achievements of the legal doctrine. The tasks of the municipality aimed at providing care and humane protection of animals were examined. The material foundations of the study are legal institutions provided by the Animal Protection Act. Three such institutions were distinguished: the homeless animal care program, the decision to temporarily collect the animal away, and the decision to keep dogs of breeds considered aggressive. The text analyzes the legal nature of the commune's tasks in this sphere and the legal implementation forms of these tasks, and highlights some ambiguous legal issues.

Keywords: Animal Protection Act; humane protection of animals; tasks of the municipality; legal provisions; homeless animals

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INTRODUCTION

The legal protection of animals results from various motives, has multiple goals and has diverse legal foundations. The two leading themes and, at the same time, the directions of normative regulations are the provisions which create a system of environmental protection of animals and humane regulations for animal protection.[1]

The Act of 16 April 2004 on the protection of nature[2] which forms the core of the legal protection of nature concerns especially wild animals, protected species, rare and protected animal species or animals which live a migratory lifestyle, important for their behavior and shaping of the natural environment. Whereas the Act of 21 August 1997 on the protection of animals,[3] in the very heart of humane law of the protection of animals, applies to (vertebrate) animals in general, treated as living and suffering beings, and therefore requiring humane treatment.

The Animal Protection Act lists several categories of animals. In particular these are: 1) stray animals – domestic or farm animals that have gone astray, got lost or been abandoned by humans, and it is not possible to determine their owner or persons under whose care they have been permanently left (Article 4 (16) APA); 2) pets – animals traditionally staying with people in their homes or other suitable place, maintained by man as his companion (Article 4 (17) APA); 3) farm animals – within the meaning of the Act of 10 December 2020 on organization of breeding and reproduction of farm animals[4] – equidae, cattle, deer, poultry, pigs, sheep, goats, honey bees, fur animals; 4) laboratory animals – within the meaning of the Act of 15 January 2015 on the protection of animals used for scientific or educational purposes[5] – in particular the house mouse, the migratory rat, guinea pig, and domestic cat, which are bred for the sole purposes of conducting specific research (basic, applied, aimed at preservation of the species, in the field of forensics); 5) animals used for special purposes, the training and use of which takes place on the basis of separate regulations, e.g., regulating the activities of the army, intelligence, police forces; 6) free-living (wild) animals – non-domesticated animals living in conditions independent of humans (Article 4 (21) APA).

The local government, and especially its basic unit – the municipality, carries out tasks in the field of animal protection, both in the field of nature and taking into account the humane (general) animal protection. The former are not strongly

[1] On the differences between the directions of legal protection of animals see K. Kuszlewicz, *Ochrona zwierząt jako części przyrody i środowiska*, [in:] eadem, *Prawa zwierząt. Praktyczny przewodnik*, Warszawa 2019; T. Pietrzykowski, *Moralność publiczna a konstytucyjne podstawy ochrony zwierząt*, "Studia Prawnicze" 2019, no. 1, p. 11.

[2] Consolidated text, Journal of Laws 2021, item 1098.

[3] Consolidated text, Journal of Laws 2020, item 638, hereinafter: APA.

[4] Journal of Laws 2021, item 36.

[5] Consolidated text, Journal of Laws 2019, item 1392.

exposed, but they are present, e.g., the participation of the municipality authorities in the procedure of projects for the Natura 2000 area or arrangements of the municipal council in the process of creating a national park. The second group tends to be more visible. This study deals with the issues regarding the shape and content of legal acts by which the municipality authorities exercise their competence in the matter of humane protection of animals, relying primarily on the Animal Protection Act.

THE LEGAL BASIS FOR IMPLEMENTING TASKS IN HUMANE PROTECTION OF ANIMALS IN THE MUNICIPALITY

The humane protection of animals is in principle a public task, which results directly from Article 1 (3) APA, ordering public administration bodies to take action on animal protection and cooperate in this regard with the relevant national and international institutions and organizations. The municipality authorities are public administration bodies and, by virtue of the Constitution of the Republic Poland,[6] participate in holding public authority and performing public tasks.

In the provisions of the Polish Constitution which provide for tasks of the commune, we read that the commune shall perform all tasks of local government not reserved to other units of local government (Article 164 (3)). In the provisions of Article 166, we read that public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility (paragraph 1); if the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute (paragraph 2). The general context for local government activity is created by Article 163 of the Constitution, stating that local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.

The above-mentioned provisions show, first, the principle of assigning to a municipality all tasks of local self-government, except those that are reserved for other local government units. Secondly, we can extract the principle of the division of public tasks performed by local governments (including a municipality) for its own tasks (serving to satisfy the needs of the local government community) and commissioned tasks (such public tasks, whose performance is commissioned by the municipality pursuant to the Act, if it results from the justified needs of the state). The doctrine of local government law, based on the provisions of the Act

[6] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.07.2021].

of 8 March 1990 on municipal self-government[7] specifies that the scope of a municipality's activity is not all public tasks, but tasks of local importance.[8] Such a conclusion results from Article 6 of the Act on municipal self-government, which states that the scope of activities of the municipality includes all public matters of local importance, not reserved by law for the benefit of others entities. The tasks of the municipality include collective fulfillment of community needs.

A municipality's own tasks focus on meeting the collective needs of the community and are local in nature regarding the various conditions of implementation of these tasks, e.g., spatial order tasks are a distinctive own task, but the shape of this order will be different in different municipalities. If a specific task should be performed throughout the country according to formal rules, in a standardized and formalized manner, it is a commissioned task, and if the specified task is not and does not have to be performed on these principles, then it is the local government' task.[9]

Therefore, it is necessary to consider whether the implementation of a public task in the form of animal humane protection occurs throughout the country and therefore belongs to the group of outsourced tasks referred to in Article 8 (1) of the Act on municipality self-government, according to which such laws may impose an obligation on a municipality to perform tasks commissioned in the field of government administration; these tasks can also be performed based on an agreement with the authorities of this administration (paragraph 2). In other words, where – in the normative scheme of the municipality's tasks and their division into local and commissioned – are humane animal protection tasks included.

It must be accepted that the (humane) protection of animals is a public task within the competence of the state, and public authorities in general. However, individual tasks that fill in content, and more general obligations are fulfilled by government administration bodies, local government administration bodies – some as local tasks, and some as commissioned tasks – and by community organizations whose statutory goal is to protect animals.

The justification for the issue is to refer to the tasks of the provincial government within the scope of the Animal Protection Act, having the nature of local tasks, but also commissioned tasks. More broadly, some local government tasks in the field of humane protection of animals are treated by the legislator as commissioned tasks and some as local tasks.

In particular, with reference to the competences of provincial self-government bodies, such competences as the introduction of animal breeding technology so far not used in Poland requires permission of the voivode and is treated as a task from

[7] Consolidated text, Journal of Laws 2020, item 713.

[8] H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, Warszawa 2006, p. 103.

[9] M. Stec, *Podział zadań i kompetencji w nowym ustroju terytorialnym Polski (kryteria i ich normatywna realizacja)*, "Samorząd Terytorialny" 1998, no. 11, pp. 5–6.

the scope of government administration (Article 13 (1) in conjunction with Article 8 (5) APA). The same applies to the permission for obtaining free-living animals for the preparation of their carcasses issued by the marshal (Article 22 (1) APA). However, when the voivodeship management prepares and implements a program on raising the awareness of provisions of the Animal Protection Act among farmers, the legislator does not state that this is a commissioned task; *a contrario*, they must therefore be treated as local tasks of the voivodeship self-government falling into the category of provincial public education.

Introducing the nature of the municipality's tasks in the field of humane protection of animals is based on their indication. Analysis of the Animal Protection Act allows to distinguish the following activities undertaken by the municipality authorities in the purpose of implementing tasks in the field of humane protection of animals: 1) temporary collection of the animal; 2) homeless animal care and preventing animal homelessness program; 3) permission to breed or keep a dog recognized as an aggressive breed.

1. Temporary collection of the animal

The legal form implementing the temporary collection of the animal is an administrative act (decision). The operation of public administration in order to temporarily collect the animal is a reaction to the act specified in the provision of Article 6 (2) APA, i.e. cruelty to animals. The legislator defines this act as inflicting or knowingly allowing to cause pain or suffering, it gives several examples of abuse (e.g., deliberate injury or mutilation of an animal, use of ill animals for work, beating animals with hard and sharp objects, keeping animals in inappropriate living conditions). In a simplification, it can be assumed that the temporary collection of the animal is a qualified legal reaction to inhumane treatment of animals or activity subject to negative assessment by the legislator.

According to Article 7 (1) APA an animal (abused) can be temporarily taken from the owner or guardian based on the decision of the municipality head (mayor, city president) competent for the place of stay of the animal and passed to: 1) an animal shelter, if it is a domestic or laboratory animal or 2) a designated farm by the head of the commune, if it is a farm animal, or 3) in the garden zoo or animal shelter if it is an animal used for entertainment, shows and movies, sports or kept in zoos.

Animal abuse is designated as a crime (Article 35 (1a) APA), which is accompanied by a decision of obligatory forfeiture of the animal by the convicted owner (Article 35 (3) APA). The competent authority (head, mayor, city president) issues an administrative act – an administrative decision on a temporary collection of the pet. The decision may take the form of two legal variants, depending on the state of a specific case – the basic variant and the qualified variant.

The basic variant is the decision of the head (mayor, city president) in the case of temporary removal of the animal subject to abuse by the owner or guardian (Article 7 (1) APA).

The circumstance for making this decision is information from the Police and municipal guard office, a veterinarian or an authorized representative of a social organization whose statutory purpose is to protect animals. It is clear that the content of the information referred to in the provision will be to notify the municipal authority about the situation of animal abuse. In response to information which in fact and legally constitutes a request for the initiation of administrative proceedings, the authority initiates such proceedings. This is the legal obligation of the authority, as evidenced by the provisions of Article 7 (1a) APA that the decision is issued *ex officio*.

The term *ex officio* in relation to administrative acts in the legal doctrine means a situation where the act is issued regardless of the party's will, these acts generally create obligations.[10] In terms of acts issued *ex officio*, the authorities decide unilaterally to issue an act. In the case of acts issued *ex officio*, a formalized procedure that is to be held before an authority of first instance may only be initiated to present the party with the evidence collected in the case and to allow them to take a stand regarding the situation.[11]

The proceedings in the first instance are terminated either through a decision to temporarily collect the animal or by a decision to refuse temporary collection of the animal – when the authority recognizes the state of affairs presented in the information as not covered by the acts. The provision of Article 7 (1) APA states that the animal may be collected from the owner, there is no obligation to adjudicate which authority is to collect the animal.

The qualified variant of the decision on the temporary pickup of the animal is described in paragraph 3 Article 7 APA. The rule says, that in urgent cases when further leaving of the animal with the current owner or caregiver threatens the life or health of the animal, a policeman, municipal warden or authorized representative from a social organization whose statutory purpose is to protect animals, may take the animal from the owner or caregiver, notifying the municipality head (mayor, city president) orders them to make a decision on the subject of collecting the pet.

In such a situation, we are dealing first with a factual act, e.g. a policeman, consisting in the actual collection of the animal. The science of administrative law indicates that it is a factual act of material and technical nature, where the authorized entity performs certain facts (picks up the animal); the technique is not usually provided by law, however, there must be provisions authorizing such actions[12]. *Mutatis*

[10] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2017, p. 281.
[11] J. Filipek, *Prawo administracyjne. Instytucje ogólne*, part 2, Kraków 2001, pp. 69–70.
[12] *Prawo administracyjne*, ed. J. Boć, Wrocław 2004, p. 355.

mutandis, such a withdrawal may be compared with the confiscation of a driving license by a policeman. Both activities then require some kind of legal authorization. In view of activities of the actual animal collection pursuant to Article 7 (3) APA, such authorization is the decision of the head (mayor, city president). The decision of the authority or prior collection – the actual act – approves it or refuses this approval, which will result in the return of the animal to the owner (guardian).

The decision to collect the animal is subject to immediate enforcement (Article 7 (2) APA). This has a twofold effect, depending on the content of the decision. Namely, the decision in which the head of the commune decides to collect the animal, after receiving and examining the information provided by the appropriate entity, means the obligation to immediately execute it, i.e. to take the animal away from the owner (guardian), in accordance with the conditions contained in the decision. However, the decision in which the authorities refuse to authorize the prior collection of the animal pursuant to Article 7 (3) APA, means the obligation to return the animal to the owner (guardian).

The fact that animals are abused has consequences in the area of administrative law and criminal law. An expression of the administrative and legal process are activities regarding the temporary collection of the animal, finalized by the decision of the head of the municipality, and, possibly, the local government appeals board and administrative court. On the other hand, the criminal procedure usually begins with a notification of the possibility of committing a crime, according to the rules of the Code of Criminal Procedure, and ends with a possible conviction for the crime of abusing an animal (Article 35 (1a) APA).

The provisions of the Animal Protection Act do not explicitly state whether the tasks in this scope and their implementation – in the form of time picking up the animal – belong to local tasks or commissioned tasks. Let me remind you that when the legislator wants to prejudge it, it simply publishes a provision, e.g. Article 3 (1) of the Act of 13 September 1996 on maintaining cleanliness and order in communes[13] stating that maintaining cleanliness and order is part of a municipality's obligatory local tasks. A similar solution is adopted for tasks in the field of preventing animal homelessness. Assuming that if the legislator wanted to, he would "write it into law" and, moreover, referring to the above-mentioned theoretical features of commissioned tasks (uniform on a national scale and formalized in terms of procedure), it should be assumed that this is a task entrusted to the municipality under the Act.

[13] Consolidated text, Journal of Laws 2021, item 888.

2. Homeless animal care and preventing animal homelessness program

The legal form of the indicated document is a resolution of the municipality council, i.e. the basic instrument of the municipality's regulatory authority. The indicated act fulfills the obligation imposed on the municipality by virtue of Article 11 (1) APA. The act states: preventing animal homelessness and care for homeless animals and catching them is part of the municipality's own tasks.

The direct legal basis for issuing the program by the municipality's authorities for caring for homeless animals and preventing animal homelessness is stated in the provision of Article 11a (1) APA: the municipality's council determines, by resolution, annually until March 31, homeless animal care and preventing animal homelessness program. Examples in this document should refer to: 1) providing homeless animals places in an animal shelter; 2) caring for free-living cats, including feeding them; 3) catching homeless animals; 4) obligatory sterilization or castration of animals in animal shelters; 5) searching for owners of homeless animals; 6) putting to sleep blind litters; 7) indicating the farm in order to provide a place for livestock; 8) provide 24/7 veterinary care in cases of road accidents involving animals.

The optional elements of the program are the animal tagging plan in the municipality and a plan for the sterilization or castration of animals, with full respect to the rights of owners or guardians of animals (Article 11a (3) and (3a) APA).

It is worth emphasizing that the legislator modified the approach to the content program. In 2012, when the provisions introducing the homeless animal care program to the Animal Protection Act entered into force, its content was more strictly delineated, namely in such a way that the legislator indicated what was to be included in it. Placing other elements in the program was legally unacceptable, as underlined in the legal commentary.[14] Currently, there are no legal obstacles to the commune council extended the program to include other elements, of course within as part of the statutory delegation and the task imposed.

The draft of the program is prepared by the executive body of the municipality and forwards it to opinions: 1) a district veterinarian; 2) social organizations, whose statutory goal is to protect animals; 3) tenants or hunting district administrators operating in the municipalities areas.

A number of important legal issues arise against the background of the nature and consequences of the indicated program. First of all, the question of the essence arises and the legal force of the resolution – Care Program, namely whether it has an attribute act of local law. If it does, it can be the basis for determination of the individual's legal position (municipality resident) through prohibitions, orders, powers or duties in terms of treatment and handling stray animals. If the Animal

[14] W. Radecki, *Ustawy o ochronie zwierząt. Komentarz*, Warszawa 2015, pp. 110–111.

Care Program is not an act of local law, it remains a directive for activities of the municipality's authorities, its organizational units, indicating the ways of carrying out the municipality's task in the field of stray animal care, however, it does not have an imperious and direct influence on the legal position resident of the municipality.

According to the established views of the doctrine and the jurisprudence of administrative courts, necessary components of the standards contained in acts of local law are to indicate not only the addressees of the standard (external to administration and generally) and the circumstances in which this standard will apply (abstractness norms), but also ordered or prohibited actions. Non-normative acts cannot be qualified as acts of local law.[15]

Despite such arrangements, the specific qualification of the municipality council resolution as the act of local law may raise doubts. To some extent, the situation is clarified by the legislator using the practice of stating that a given act is an act of local law (e.g. Article 14 (8) of the Act of 27 March 2003 on planning and spatial development[16] local plan is an act of local law), however, it only gives certainty analysis of specific resolutions.

In the subject of our interest to the resolutions – care programs for homeless animals – I will refer to the examples of acts adopted in some Polish cities. Analysis of animal care programs of stray animals admitted in Warsaw,[17] Wrocław[18] and Poznań[19] allows the conclusion that they contain no external indications towards administration of addressees whose behavior would be authoritatively determined (by prohibitions or orders).

For example, a resolution adopted in Warsaw contains the following parts: introduction (informative, showing homelessness as a social phenomenon and its causes, emphasizing the focus on animals such as dogs and cats, including free-living cats); general provisions (indication of entities participating in the implementation of the program); indication of the purpose and tasks of the program (prevention of animal homelessness, care); preventing homelessness (electronic tagging, sterilization and castration, putting to sleep of blind litters – indication implementers); caring for stray animals (catching, shelter, looking for owners – the index of implementers); care over free-living cats (forms, entities implementing); providing round-the-clock veterinary care in cases of road incidents involving animals (indication of implementers); 8) financing of the program.

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[15] D. Dąbek, *Sądowa kontrola aktów prawa miejscowego – aspekt materialnoprawny*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2013, no. 3, p. 77; judgement of the Supreme Administrative Court of 24 January 2017, I OSK 1969/16, LEX no. 2237743.

[16] Consolidated text, Journal of Laws 2021, item 741.

[17] Resolution of the Warsaw City Council no. XXV/709/2020 of 16 January 2020.

[18] Resolution of the Wrocław City Council no. XXII/602/20 of 30 April 2020.

[19] Resolution of the Poznan City Council no. XXIV/459/VIII/2020 of 10 March 2020.

In turn, the resolution adopted in Wrocław contains the following parts: general issues (purpose, explanation of some concepts and indication of entities participating in the implementation of the program); implementation of tasks (indication tasks performed by the President related to the provision of care of stray animals, reducing the number of stray animals, care over free-living cats and the humane reduction of their populations, promoting responsible attitudes towards animals); monitoring and financing of activities.

The act adopted in Poznań, opened with a preamble, contains the following parts: introduction (explaining concepts, goals, guidelines, showing animal homelessness as a social problem); goals of the program (care, education, preventing animal homelessness); program tasks; program executors; providing homeless pets with a place in a shelter; caring for free-living cats; catching homeless animals; sterilizing animals in a shelter; finding owners for homeless animals; emergency veterinary aid for domestic owners; putting to sleep blind litters; providing a place for livestock in the indicated farm; providing round-the-clock veterinary care in cases of road incidents involving animals; plan for electronic tagging of animals in the city of Poznań; educational and information activities; plan for sterilization or castration of animals in the city of Poznań, with full respect for the rights of animal owners or other people in whose care the animals stay; financing of the program.

Generally speaking, programs are structured around goals, tasks, entities implementing them with particular emphasis on animal shelters. Basically, they do not contain the wording featuring the regulation of generally applicable law, effective on natural persons.

Interpretation doubts may also be raised by the words of Article 11a (2) (4) APA. This provision indicates, as one of the elements of the program, obligatory sterilization or castration of animals in animal shelters. There was an opinion among commentators that this could mean that all castration (sterilization) of caught animals should take place in a shelter, which would be absurd because it would mean that you can not treat a homeless trapped animal in medical center for animals.[20] I believe that the provision, in the intention of the legislator, leads to sterilize the animals that have entered the shelter. The point is not that all sterilizations take place in animal shelters, but those animals in found themselves in the shelter were treated. Such an interpretation is in line with the statutory goal of preventing animal homelessness (through control of their population and reproduction) and the position of the shelter as a basic place to help homeless animals.

Article 9a APA imposes on anyone who encounters an abandoned dog or cat, the obligation to notify the closest animal shelters, municipal guard or Police. An abandoned dog or a cat is a stray animal according to the legal definition of stray animal. It is natural for every lawyer to ask about the legal consequences in case of

[20] W. Radecki, *op. cit.*, p. 111.

failure to fulfill this obligation. I do not find a provision penalizing such behavior (consisting in failure to notify about encountering an abandoned dog or cat) in the criminal provisions of the Animal Protection Act (Articles 35–40) or in the Code of Petty Offenses,[21] so there is no question of legal liability.

Failure to fulfill the obligation to inform a specific authority is sometimes a prohibited act – an offense under Article 73 of the Code of Petty Offenses is failure to notify the relevant authority about danger threatening human life or health, or property in large sizes. However, this is not the case here. Failure to comply with the obligation under Article 9a APA does not bear responsibility in the area of criminal law, as there is no appropriate sanction in the provisions of the Animal Protection Act, and the provision of the Code of Petty Offenses connects failure to notify with danger for human life or health, or substantial property sizes.

3. Permission to breed or keep a dog recognized as an aggressive breed

The legal basis for the authorizing act is Article 10 (1) APA, according to which breeding or keeping a breed dog considered aggressive requires a permit issued by the municipality head (mayor, president) competent for the planned place breeding or keeping a dog at the request of the intending breeder or person maintain such a dog. The permit is the legal form of an administrative decision issued by the municipality head (mayor, president), appropriate for the place of breeding (keeping the dog). It concerns two situations: breeding a dog considered to be aggressive and the keeping of such a dog.

The premise for classifying a dog as an aggressive breed is the fact that it is on a list of dog breeds considered aggressive, announced by the minister competent for public administration, after consulting with The Kennel Club (Article 10 (3) APA). At the preparation of the act, the minister is guided by the need to ensure safety of people and animals. The Minister of the Interior and Administration performed the statutory delegation by issuing on 28 April 2003 regulation on the list of dog breeds recognized as aggressive, indicating 11 such breeds[22].

In the beginning, the question of the legal nature of the approval decision arises. The guideline is provided in Article 10 (2) APA: The permit is not issued and the issued one is withdrawn if the dog is or will be kept under conditions and in a manner which constitute a hazard to people or animals. Reasoning *a contrario*, and being based on the well-established in administrative and court-administrative proceedings the principle of narrowing the administrative decision towards taking into consideration the interest of the party, if the decision does not prejudice pub-

[21] Act of 20 May 1971 – Code of Petty Offenses (consolidated text, Journal of Laws 2021, item 281).

[22] Regulation of the Minister of Internal Affairs and Administration of 28 April 2003 on the list of dog breeds considered aggressive (Journal of Laws 2003, no. 77, item 687).

lic interest, it should be assumed that the approval decision is bound. This means that if the circumstances showing that a dog of aggressive breed is kept under conditions, in a manner not threatening to humans and other animals, this permit should be granted.

This is the legal provision, although the axiology according to which we accept the right to keep a dog of a dangerous breed at home and in public places may arouse factual and social controversy. There are also legal uncertainties, including the question of whether permits are required to maintain the so-called half-breed of an aggressive race, since half-breeds are not indicated on the list. On the one hand, the rules imposing restrictions should not be interpreted extending, on the other hand, it would be against the legislator's intention (*ratio legis*) and simply common sense to assume that an aggressive half-breed, does not pose a threat, since it is subject to rationing the maintenance of its "purebred" parents.

Keeping a dog of a breed recognized as aggressive without permission is an offense under Article 37a APA, according to which perpetrator may be punished by detention or fine, and if punished, the court may decide forfeiture of the animal.

The above-mentioned sanction should be distinguished for failure to comply an appropriate administrative decision, from sanctions for failure to observe proper precautions when keeping an animal. The second behavior, in two variants, is an act described in Article 77 §§ 1 and 2 of the Code of Petty Offenses and is subject to restriction of personal liberty, fines or reprimand.

The administration authorities may also use the instruments of the Act of 17 June 1966 on enforcement proceedings in administration[23] for the performance of non-pecuniary obligations, in particular, a fine for coercion (Article 2 § 1 (10) in conjunction with Article 119).

The indicated sanctions may or may not overlap. For example, a sanction for failure to take appropriate precautions does not have to refer to keeping a dangerous breed dog. A sanction for failure to obtain a permit may (but does not have to) appear alongside a sanction for failure to take precautionary measures, and possible legal liability from Article 431 of the Civil Code[24] (liability for damages caused by animals) is a separate legal issue.

It remains to decide about the nature of the task in the form of rationing keeping dogs of breeds considered aggressive. This is a task commissioned from scope of government administration, and the justification is the same as in the case of a decision to temporarily collect the animal.

[23] Consolidated text, Journal of Laws 2020, item 1427.

[24] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740).

CONCLUSION

The municipality plays an important role in the legal system of humane protection animals. The analysis of the provisions of the Animal Protection Act allows the municipality to be assigned three tasks specifying the general legal obligation to act for the protection of animals. These tasks are performed in the form of a resolution municipality council, but of a non-normative nature (care programs for stray animals), and in the form of administrative acts (decision on temporary collection of the animal and the decision allowing a dog to be kept breed known to be aggressive). The task of prevention and care of stray animals is directly recognized as the municipality's own task. The analysis of the legal structure of the remaining tasks requires that they be included in the tasks assigned to the municipality. A closer legal analysis of the indicated acts allows us to see other, not entirely clear legal problems, such as the phenomenon of keeping hybrids of aggressive breeds or the cat's special position as a free-living "city" animal.

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Warsaw City Council Resolution no. XXV/709/2020 of 16 January 2020.
Wrocław City Council Resolution no. XXII/602/20 of 30 April 2020.

Case law

Judgement of the Supreme Administrative Court of 24 January 2017, I OSK 1969/16, LEX no. 2237743.

ABSTRAKT

Artykuł ma charakter naukowo-badawczy, a wnioski i przemyślenia autora opierają się na wykładni przepisów prawnych oraz dorobku doktryny prawa. Badaniu poddano te zadania gminy, które mają na celu zapewnienie opieki i humanitarną ochronę zwierząt. Podstawę materialną opracowania stanowią instytucje prawne wyprowadzone z ustawy o ochronie zwierząt. Wyodrębniono trzy takie instytucje: program opieki nad zwierzętami bezdomnymi, decyzję o czasowym odebraniu zwierzęcia oraz decyzję zezwalającą na utrzymywanie psów ras uznanych za agresywne. W tekście przeanalizowano charakter prawny zadań gminy z tej sfery i formy prawne realizacji tych zadań oraz zasygnalizowano niektóre niejednoznaczne kwestie prawne.

Słowa kluczowe: ustawa o ochronie zwierząt; humanitarna ochrona zwierząt; zadania gminy; przepisy prawne; zwierzęta bezdomne