

Original Scientific Paper

**LEGAL PROTECTION OF ABANDONED ANIMALS  
UNDER THE ANIMAL WELFARE ACT \***

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**Nataša Stojanović**

Faculty of Law, University of Niš, Serbia

**Abstract.** *The problem of abandoned animals is not specific only to transitions countries, such as the Republic of Serbia. The global economic crisis has had a direct impact on the growing number of abandoned animals worldwide. Relying on the legislative models of a number of European countries, the Republic of Serbia adopted the Animal Welfare Act in 2009, which envisaged a different, qualitatively new and generally less discriminatory relationship of human beings towards animals. The adoption of this act has made provisions for an integral and comprehensive legal protection of animals in the territory of the Republic of Serbia. Yet, this Act has also given rise to a number of questions. What is the actual scope of legal protection of abandoned animals under the Serbian Animal Welfare Act? Has the application of this Act (and the accompanying regulations) yielded specific results in the field of reducing the number of abandoned animals? What kinds of problems are encountered by the local authorities in the City of Niš in the implementation of the Animal Welfare Act? What kind of action has been envisaged in the Animal Population Control Program aimed at controlling and reducing the population of abandoned dogs and cats in the territory of the City of Niš? Moreover, what are the prospects of accomplishing the envisaged goals in a recent future? These are some of the questions the author endeavours to address in this article.*

**Key words:** *animal welfare, responsible ownership, abandoned animals, legal treatment of abandoned animals.*

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**Corresponding author:** Nataša Stojanović

Faculty of Law, Trg Kralja Aleksandra 11, 18000 Niš, Serbia

Tel: +381 18 500 272 • E-mail: [natasa@prafak.ni.ac.rs](mailto:natasa@prafak.ni.ac.rs)

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## INTRODUCTION

Relying on the legislative models of a number of European countries, the Republic of Serbia adopted the Animal Welfare Act in 2009.<sup>1</sup> In its 89 articles, this Act has laid down the legal grounds for a different, qualitatively new and generally less discriminatory relationship of human beings towards animals. In compliance with the basic European standards on animal protection<sup>2</sup>, this legal document regulates the nature of man's relationship with domesticated animals (pets), animals used for production purposes or working animals; animals used for experimental or scientific research, biomedical and educational purposes; animals used for competition, exhibitions and other public display purposes; abandoned or stray animals; and wild animals raised in captivity.<sup>3</sup>

The subject matter of this paper is the legal treatment of abandoned animals perceived in the light of the animal welfare acts of some European countries, with specific reference to the national legislation in this area.

Under the Serbian Animal Welfare Act, the term "abandoned animal" implies "a homeless animal or an animal living outdoors which is deprived of care and nurture as a result of the owner's or caretaker's conscious and deliberate abandonment."<sup>4</sup> Although abandoned animals fall into the category of stray animals, there is a difference between them; unlike stray animals, abandoned animals either used to have their owners or were born in the street but originate from animals which used to be owned by humans.

## 1. ABANDONED ANIMALS AS A SOCIAL PROBLEM

Nowadays, there is a general lack of empathy for other living creatures. We bear witness of a great deal of hostility, aggression and cruelty not only towards other human beings but also towards animals. Human beings seem to have forgotten the basic premises of Darwin's evolution theory which revealed the intrinsic and inseparable bonds between all living organisms on the planet Earth, which are interrelated through evolution. In spite of these inherent bonds, human beings are still prone to exercising a discriminatory attitude to other species ("*specism*"),<sup>5</sup> which demonstrates their superiority or dominance over

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<sup>1</sup> *Službeni glasnik RS* (The Official Gazette of the Republic of Serbia), no 41/2009

<sup>2</sup> These standards are contained in the following conventions of the Council of Europe, which have been ratified by our country: the European Convention for the Protection of Animals during International Transport, ETS 065, and the accompanying Protocol to the European Convention for the Animal Protection in International Transport, ETS 103 (Official Gazette of SRY, International agreements, no. 1/1992); the European Convention for the Protection of Animals kept for Farming Purposes, ETS 87 (Official Gazette of SRY, International agreements, no. 6/1996); the European Convention for the Protection of Animals for Slaughter, ETS 102 (Official Gazette of SRY, International agreements, no 6/1996); the European Convention for the Protection of Vertebrate Animals aimed for experimental and other scientific purposes, amended by the Protocol amending the European Convention for the Protection of Vertebrate Animals for experimental and other scientific purposes, ETS 123 (Official Gazette of RS, International agreements, no. 1/2010); and the European Convention for the Protection of Pet Animals, ETS 125 (Official Gazette of RS, International agreements, no. 1/2010).

<sup>3</sup> See: Article 2 of the Animal Welfare Act of the Republic of Serbia

<sup>4</sup> See: Article 5, item 22 of the Animal Welfare Act of the RS

<sup>5</sup> The term "*specism*" (derived from Engl. "*species*") denotes any form of human discrimination against animals as members of an inferior biological species. For more details, see: N. Visković, *Iz povjesti zaštite*

other living organisms. In urban areas, this predominance is reflected in different forms of animal abuse and killing while in rural areas it is reflected in neglecting animals.

The problem of abandoned animals is a distinct social problem which is not specific only to transition countries, such as Serbia. The global economic crisis, which has struck a vast majority of countries worldwide, has a direct impact and effect on the growing number of abandoned animals. Faced with economic hardship and unable to repay their debts and housing loans, people leave their pets in animal shelters, desert them in the facilities they have been obliged to vacate, or simply let them roam in the streets. Given the significant increase in the overall population of abandoned animals, animal shelters have neither the adequate facilities nor sufficient funds at their disposal to provide for their accommodation and care. Some abandoned animals are adopted or permanently placed in animal shelters while others are euthanized.<sup>6</sup> In the last few years, many animal protection societies in the developed countries have resorted to applying the so-called "Trap-Neuter-Return" (TNR) program in an attempt to reduce the number of stray cats and dogs. The TNR program includes capturing (trapping) the abandoned animals, having them spayed or neutered (sterilized or castrated) depending on their gender, having them vaccinated against rabies and returned into their former habitats/living environment, subject to an obligation to keep providing for their regular nourishment and health care. In practice, the application of this program has shown signs of stabilization in the population of abandoned cats and dogs at the initial stage of the program, eventually resulting in a reduction of the total number of abandoned animals.<sup>7</sup> The positive aspect of this program is that spayed or neutered animals generally live longer, have fewer health issues and receive a better treatment.<sup>8 9</sup>

As for the Republic of Serbia, the official statistics show that there is a total number of 708,000 dogs and 36,000 cats without an owner.<sup>10</sup> For the most part, these are domesticated animals (pets) which have been abandoned by their owners for different reasons: for insufficient funds to provide for the animals, due to the neighbours' complaints or as a result of some serious injury, harm or damage the animal has caused. In practice, these ani-

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*stabala i šuma* (I), Zbornik radova Pravnog fakulteta u Splitu, (*The History of Protection of Trees and Forests*, Collection of Papers of the Law Faculty in Split, no. 37/2000, p. 316, footnote 5, and literature provided therein; M. Paunović, *Pravo životinja (Animal Law)*, Belgrade, 2004, pp. 48-51.

<sup>6</sup> See: W. Diamond, *America's Foreclosed Pets*, The Huffington Post, Cleveland, 2007, p. 1. Taken from the website: [http://www.huffingtonpost.com/wendy-diamond/americas-foreclosed-pets\\_b\\_200241.html](http://www.huffingtonpost.com/wendy-diamond/americas-foreclosed-pets_b_200241.html), accessed on 12 January 2011.

<sup>7</sup> This program was initially aimed at feral cats but it soon came to be applied in controlling and reducing the number of stray cats and dogs. For more detail on this issue, see these websites: <http://www.asPCA.org/adoption/feral-cats-faq.aspx>, <http://www.fanciers.com/npa/tvar.html>; and <http://www.thenature.ro/tnr-dogs.html>, accessed on 18 February 2011.

<sup>8</sup> For more information, see: M. C. Jasper, *Pet Law*, Oxford University Press, 2007, pp. 5-6.

<sup>9</sup> Yet, some studies show the downside of this method which does not prove to be so efficient after all, *inter alia*, because many new abandoned animals inhabit the areas where this method has been applied. For more details on this issue, see: J. K. Levy – D. W. Gale – L. A. Gale, *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, JAVMA, Vol. 222, N. 1/2003; M. K. Stoskopf – F. B. Nutter, *Analyzing approaches to feral cat management – one size does not fit all*, JAVMA, Vol. 225, No. 9/2004.

<sup>10</sup> The data are taken from: <http://www.sloboda-za-zivotinje.org/sr/ljudi-za-zivotinje/prava-zivotinja/ekserimaranili> (freedom for animals), accessed on 27 December 2010.

mals are quite frequently exposed to abuse, maltreatment, injury and killing by human beings. In consequence of sustained fear, torture and hunger, some of these animals resort to attacking people.

Given the fact that domesticated animals (pets) are often regarded as objects of personal property<sup>11</sup> (which can be easily discarded once they stop serving their purpose) and due to their uncontrolled reproduction, the Serbian society has been facing many problems which are directly related not only to animal welfare but also to the welfare of human beings as well as to the protection and preservation of the immediate environment. The abandoned animals (primarily dogs) cause diverse problems involving numerous health, sanitation, environmental, aesthetic, economic, safety and social security issues. For years, there have been efforts to solve these problems by imposing repression measures, primarily reflected in applying inhuman methods of capturing (trapping) and killing the abandoned/stray animals in the so-called temporary transit shelters.<sup>12</sup> However, these measures have proved to be inefficient<sup>13</sup> given the fact that the population of abandoned cats and dogs is far from being reduced and that the "vacated" areas where animals have been "neutralized" are constantly inhabited by other stray animals in search for food in a new living environment. The practice of relocating the abandoned cats and dogs (by moving them from one place to another) has also proven to be highly ineffective.

## 2. A FEW NOTES ON ANIMAL WELFARE

There is hardly a single international document or legal writing on animal protection that does not include the concept of "animal welfare".<sup>14</sup> This concept implies that human beings shall ensure adequate conditions for an animal to meet its biological needs without being exposed to fear, suffering, pain and distress. An animal's basic biological needs include: the need for proper food, fresh water, adequate housing and living environment, the need to exhibit its natural behaviour, and the need for veterinary healthcare services.<sup>15</sup>

Accordingly, animal welfare encompasses five basic animal rights: the right to food and water, the right to life without pain, injury and illnesses (including the right to veterinary services), the right to adequate housing; the right to exhibit its natural behaviour (in-

<sup>11</sup> For more arguments supporting the treatment of animals as property, see: G. L. Francione, *Animals as Property*, 2 *Animal Law*, 1/1996.

<sup>12</sup> In particular, this problem is illustrated in a newspaper article "Otrovanu reku farbaju u plavo, pse lutilice ubijaju deteržentomom" ("Painting the toxic river blue and killing stray dogs with detergent") by V. Crnjanski-Spasojević, printed in *Nedeljni telegraf* of 10 February 2010.

<sup>13</sup> For more information on this unacceptable solution to the problem of stray cats and dogs, see in: N. Visković, *Pravna zaštita kućnih životinja (ljubimaca) – Evropska konvencija iz 1987. i Talijanski zakon iz 1991*, Zbornik radova Pravnog fakulteta u Splitu, (*Legal Protection of Domesticated Animals (Pets) under the European Convention of 1987 and in the Italian Act of 1991*, Collection of Papers of the Law Faculty in Split, no. 29/1–2, 1992, pp. 87–89.

<sup>14</sup> For more information on the broader meaning of the term "animal welfare", see in: G. Mesaroš, *Dobrobit životinja (Animal Welfare)* at the website: [http://www.protego-org.org/index.php?option=com\\_content&view=article&id=118:dobar...](http://www.protego-org.org/index.php?option=com_content&view=article&id=118:dobar...)

<sup>15</sup> In that context, see for example: Article 3 of the European Convention for the Protection of Pet Animals; Article 1 of the Universal Declaration for the Welfare of Animals (Focus on Legislation, vol. 3, no 1/2001); Article 9 of the Animal Welfare Act of Great Britain (2006); and Article 5, para. 4 of the Serbian Animal Welfare Act (2009). For a similar definition on animal welfare, see: *Terrestrial Animal Health Code*, OIE, 2009.

cluding social contacts with other animals of the same species), and the right to life without fear and suffering.<sup>16</sup>

Apart from being the key factor for the existence and subsistence of some animal species, animal welfare is highly significant for human beings as well. The accomplished level of animal welfare in a society has a direct impact on a number of other issues, such as the quality of food articles of animal origin which further reflects the country's economic development, the likelihood of transmission of contagious diseases, the citizens' public safety, a lower level of violence in the society, and the quality of the immediate living environment.<sup>17</sup>

### 3. LEGAL PROTECTION OF ABANDONED ANIMALS IN THE CONTEMPORARY LEGISLATIONS OF SOME EUROPEAN COUNTRIES

The act of abandoning pets and other domestic animals living under man's close supervision is explicitly prohibited (almost without exception) in all the contemporary legislations whose legal solutions have been subject to this analysis.<sup>18</sup>

There is also an explicit prohibition governing the release of a wild animal raised in captivity into its natural habitat or exposure to the wild unless the animal is well-prepared for survival in such an environment.<sup>19</sup>

The legal provisions governing the prohibition of animal killing, torture, infliction of pain and suffering, and exposure to fear and distress equally apply to abandoned animals.<sup>20</sup>

Moreover, abandoned animals may not be used for experimental purposes.<sup>21</sup> Anyone who negligently causes some harm or injury to an abandoned animal is obliged to help such an animal or to provide professional assistance of a veterinarian.

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<sup>16</sup> The five basic animal rights were envisaged by the Farm Animal Welfare Council (FAWC) in 1979. Today, this concept has been international recognized with regard to all animals, which was confirmed in Article 4 of the Universal Declaration on Animal Welfare. For more detail, see the website; <http://www.prijateljizivotinja.hr/index.hr.php?id=1847>, accessed on 18 December 2010.

<sup>17</sup> For more detail on the significance of animal welfare for human beings, see the website: <http://orca.rs/znacaj-dobrobiti-zivotinja-/2010/12/13/znacaj-dobrobiti-zivotinja.html>, accessed on 17 December 2010.

<sup>18</sup> See, for example, Article 4, para. 2 of the 2005 Animal Protection Act of Switzerland (SR 455); para. 3, item 3 of the 1972 Animal Protection Act of Germany (*Tierschutzgesetz*, the version published in 2006, BGBI. IS 1206, 1313, including the amendments in para. 20 of 2010, BGBI. IS. 1934); Article 4 (items 1 and 2) of the Animal Welfare Act of Great Britain; Article 15, para. 1, item 12 of the 1999 Animal Protection Act of Slovenia (*Uradni list RS*", no. 98/1999, 126/2003, 20/2004, 61/2006, 14/2007 and 43/2007 – revised), Article 5, para. 1 of the 2006 Animal Protection Act of Croatia („*Narodne novine*", no. 135); Article 4 b of the 2009 Animal Protection and Welfare Act of Bosnia and Herzegovina (*Službeni glasnik BiH*, no. 25/2009).

<sup>19</sup> See, for example, para 3, item 4 of the Animal Protection Act of Germany; Article 15, para. 1, item 14 of the Animal Protection Act of Slovenia; Article 5, para. 2 of the Animal Protection Act of Croatia; and Article 4 (item c) of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>20</sup> See, for example, para. 1 of the Animal Protection Act of Germany; Article 4, para. 2 of the Animal Protection Act of Switzerland; Article 4 of the Animal Welfare Act of Great Britain; Articles 3 and 4 of the Animal Protection Act of Slovenia; Article 4, para. 1 of the Animal Protection Act of Croatia; and Article 3 of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>21</sup> For example, see: para. 9, item 7 of the Animal Protection Act of Germany; Article 18, para. 5 of the Animal Protection Act of Switzerland; Article 20a of the Animal Protection Act of Slovenia; Article 67, para. 1, item 28 of the Animal Protection Act of Croatia; and Article 27, para. 4 of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

Captured abandoned animals are placed in animal shelters. Many animal protection acts expressly oblige the local government units (authorities) to build one or more animal shelters in the territory of their respective jurisdiction.<sup>22</sup> In these shelters, abandoned animals must be provided with sufficient food and fresh water, adequate accommodation and veterinary healthcare services.<sup>23</sup> The shelter administration is obliged to keep records on each abandoned animal placed in its care. Within the prescribed period of time, the owner of an abandoned animal is entitled to claim the animal to be returned from the shelter to the owner.<sup>24</sup> Upon the expiry of the prescribed time limit, the abandoned animal may be adopted or placed in foster care of another person.

In case the abandoned animal is not placed for housing with another person within the prescribed period, there are legal provisions envisaging that such an animal may be euthanized.<sup>25</sup> An abandoned animal will be euthanized if it is found to be suffering from an incurable disease or if it is terminally injured beyond recovery.<sup>26</sup>

A conduct which is in contravention with these prohibitions is subject to relevant sanction. In different contemporary legislations, such conduct is classified either as a criminal offence or as a misdemeanour (infraction).

In **Switzerland**, the act of abandoning an animal is illegal; if such an illicit act is established to have been committed with intent (premeditation), the prescribed punishment is a fine or imprisonment for a term not exceeding three years. If the animal has been abandoned as a result of negligence, the Swiss legislator prescribes a term of imprisonment or a fine amounting to 200,000 Swiss Francs.<sup>27</sup> In addition to these sanctions, the Swiss legislator has provided for a further protection of animal welfare; thus, irrespective of the awarded punishment, a person may be prohibited (either on a permanent or temporary basis) to keep or breed animals, to engage in animal trade or to use animals for any professional activities, provided that such a person is found to be a multiple offender who has committed a number of serious violations of the provisions contained in the Animal Protection Act and has been previously convicted of similar offences, or in case there are other reasons that make the person incompetent to keep, raise and breed animals.<sup>28</sup> In order to preclude the act of abandoning domesticated animals (pets), the Swiss legislation has envisaged a precaution measure which involves taking the animal away from its owner or holder, provided that the competent authority has established that the animal has been neglected, kept in inhuman conditions or subjected to inhuman or degrading treatment.<sup>29</sup>

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<sup>22</sup> For example, see: Article 27 of the Animal Protection Act of Slovenia; Article 56 of the Animal Protection Act of Croatia; and Article 28, para. 4 and 5 of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>23</sup> For example, see: Article 28, para. 1 of the Animal Protection Act of Slovenia.

<sup>24</sup> In Slovenia and Bosnia and Herzegovina, the time limit is 8 days from the date of placing the abandoned animal in an animal shelter. In Croatia, the time limit is 15 days. For example, see: Article 28, para. 2 and 3 of the Animal Protection and Welfare Act of Bosnia and Herzegovina; Article 30 of the Animal Protection Act of Slovenia; and Article 57, para. 3 the Animal Protection Act of Croatia.

<sup>25</sup> In Slovenia, for example, the prescribed time limit is 30 days while in Croatia it is 60 days. See: Article 31, para 5 of the Animal Protection Act of Slovenia; and Article 57, para. 4 the Animal Protection Act of Croatia.

<sup>26</sup> For example, see: Article 32, para. 2 of the Animal Protection Act of Slovenia, and Article 27, para 3 of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>27</sup> See: Article 26, para. 1 and 2 of the Animal Protection Act, in conjunction with Article 333, para 2 of the Swiss Criminal Code of 1937 (RS 311.0).

<sup>28</sup> See: Article 23 of the Animal Protection Act of Switzerland

<sup>29</sup> See: Article 24 of the Animal Protection Act of Switzerland

In **Germany**, the act of animal abandonment is punishable by a fine amounting to 25,000 Euros.<sup>30</sup> The overpopulation of abandoned animals is precluded by the legal provision prescribing that the animal shall be taken away from the owner/holder who (in the professional opinion of a competent veterinarian) does not provide for the animal care and well-being.<sup>31</sup> The German legislator has also prescribed the prohibition on keeping animals by a multiple offender who has committed a number of prior serious violations of the animal protection regulations.<sup>32</sup>

In **Great Britain**, the abandonment of domesticated animals (pets) is punishable by imprisonment for a term not exceeding 51 weeks or a fine amounting to 20,000 pounds. Depending on the circumstances of a specific case, the competent court may impose a cumulative sentence.<sup>33</sup> Apart from these sanctions, the British legislator has also prescribed an option that the owner may be deprived of ownership of an animal even before the owner is officially convicted<sup>34</sup>; in addition, the competent court has a discretionary power to make a court order depriving the owner of the right to own, keep or participate in taking care of any other animal (either independently or jointly with another person) for a period the court considers to be appropriate, or to make an order prohibiting a person to be part of any body of authority or arrangement under which such a person would be in a position to control or influence the way animals are to be kept.<sup>35</sup>

In **Slovenia**, animal abandonment (either permanent or temporary) is classified as a misdemeanour (infraction) which is punishable by a fine ranging from 1,600 to 42,000 Euros for a legal entity or an independent entrepreneur. A responsible person employed in a legal entity or by an independent entrepreneur may be awarded a fine ranging from 800 to 2,000 Euros. A natural person may be awarded a fine ranging from 400 to 800 Euros.<sup>36</sup> The increase of abandoned dogs and cats population may also be precluded to some extent by the activity of the competent veterinary inspection. Under the Animal Protection Act, the veterinary inspector is authorized *inter alia* to permanently or temporarily take the animal away from the owner/holder, provided that the person has acted in contravention with the legal provision contained in this document.<sup>37</sup>

In **Croatia**, the prescribed fine for abandoning a domestic animal, a pet, a wild animal raised in captivity or other animal under man's close supervision ranges from 30,000 to 50,000 HRK for a legal entity, a fine ranging from 5,000 to 10,000 HRK for a responsible person employed in a legal entity and a fine ranging from 5,000 to 15,000 HRK for a natural person.<sup>38</sup> In order to control and reduce the number of abandoned animals, the Croatian legislator has prescribed a preventive measure under which a competent veterinary inspector is authorized to issue a provisional order for taking the abandoned animal from the owner on a temporary basis if the animal is believed to be exposed to pain, suffering and great fear.<sup>39</sup>

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<sup>30</sup> See: Article 18, para. 4 of the Animal Protection Act of Germany

<sup>31</sup> See: Article 16 a, para. 2, in conjunction with Article 2 of the Animal Protection Act of Germany

<sup>32</sup> See: Article 16 a, para 3 of the Animal Protection Act of Germany

<sup>33</sup> See: Article 32, para. 1 of the Animal Welfare Act of Great Britain

<sup>34</sup> See: Article 33, para. 1 of the Animal Welfare Act of Great Britain

<sup>35</sup> See: Article 34 of the Animal Welfare Act of Great Britain

<sup>36</sup> See: Article 46, para 1, items 2 and 3 of the Animal Protection Act of Slovenia

<sup>37</sup> See: Article 43, para 3 of the Animal Protection Act of Slovenia

<sup>38</sup> See: Article 67, para 1, item 11 of the Animal Protection Act of Croatia

<sup>39</sup> See: Article 64, item 3 of the Animal Protection Act of Croatia

In **Bosnia and Herzegovina**, the act of abandoning an animal is punishable by a fine ranging from 30 to 10,000 KM for a natural person, a fine ranging from 200 to 200,000 KM for a legal entity, and a fine ranging from 200 to 20,000 KM for a responsible person employed in a legal entity.<sup>40</sup> The Animal Protection and Welfare Act also contains a legal solution which precludes the increase of abandoned animals population by providing that the competent veterinary inspector has the authority to issue either a temporary or a permanent order to take the animal away from the owner who has violated the legal provisions contained in this Act.<sup>41</sup>

#### 4. LEGAL PROTECTION OF ABANDONED ANIMALS IN THE SERBIAN LEGISLATION

The legal treatment of abandoned animals has been given a special position in the Serbian Animal Welfare Act.<sup>42</sup>

In keeping up with the legislations of other countries, the Serbia legislator has explicitly prescribed the prohibition of abandoning and discarding of domestic animals whose survival and subsistence depends on the human presence and care.<sup>43</sup> There is also a provision prohibiting a return of a cultivated wild animal raised in captivity into the wild unless the animal is well-prepared for a life in its natural habitat.<sup>44</sup> An abandoned animal may not be abused, deprived of life (but for exceptional cases which are prescribed in this Act), nor can it be subject to hunting.<sup>45</sup> If a person negligently harms or injures an abandoned animal, the Animal Welfare Act obliges the person to help the animal or to provide a professional assistance of a veterinarian.<sup>46</sup> Neither an abandoned (or lost) animal nor a stray animal may be used for experimental purposes.<sup>47</sup>

Under the Animal Welfare Act, the conduct which is contrary to these express prohibitions is classified as a misdemeanour (infraction), which is punishable by an adequate fine. Thus, any inobservance of the prohibition on abandoning or discarding an animal reliant on human care is punishable by a fine ranging from 100,000 to 1,000,000 RSD for a legal entity, a fine ranging from 10,000 to 50,000 RSD for a responsible person employed in a legal entity, and a fine ranging from 5,000 to 50,000 RSD for a natural person (the owner/holder of the abandoned animal).<sup>48</sup>

A human treatment of abandoned animals implies a scope of activities which have to be performed by some state bodies of authority.

First of all, pursuant to the Animal Welfare Act, local government units (authorities) are obliged to draft the Animal Population Control Program within a period of two years from the date of entering this Act into force. This program is aimed at controlling and re-

<sup>40</sup> See: Article 41, para. 1 (item b) and Article 42, para. 1 (item b) and para 2 of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>41</sup> See: Article 38 (item c) of the Animal Protection and Welfare Act of Bosnia and Herzegovina.

<sup>42</sup> See, in particular: Article 7 (item 2), Article 54 and Articles 61-79 of the Animal Welfare Act of Serbia

<sup>43</sup> See: Article 7, para 1, item 2 of the Animal Welfare Act of Serbia

<sup>44</sup> See: Article 7, para 1, item 14 of the Animal Welfare Act of Serbia

<sup>45</sup> See: Article 1, Article 3 and Article 31 of the Animal Welfare Act of Serbia

<sup>46</sup> See: Article 6, para. 3 of the Animal Welfare Act of Serbia

<sup>47</sup> See: Article 37, para 1 of the Animal Welfare Act of Serbia

<sup>48</sup> See: Article 82, para 1 (item 2), para 2 and Article 85, para 1 and 2 of the Animal Welfare Act of Serbia

ducing the overpopulation of abandoned dogs and cats in compliance with the specific circumstances in a particular environment. The local government authorities are also obliged to establish an animal shelter for abandoned animals.<sup>49</sup>

Second, a finder of an abandoned animal is obliged under this Act to report it to the nearest registered animal shelter, which shall take immediate action to provide for the animal care.<sup>50</sup> The owner or the holder of a lost animal is obliged to report the loss to the competent body of the local government authority and the veterinarian service within a period of no more than three days from the date of animal disappearance. Otherwise, the person's omission to take action will be considered as an act of animal abandonment.<sup>51</sup>

Apart from the competent local government unit, a shelter for abandoned animals may also be established by some other (natural or legal) person, provided that the animal shelter has met the requirements prescribed in this Act.<sup>52</sup> The owner of such a shelter must provide: relevant space and facilities for the accommodation of lost and abandoned animals, employ relevant staff trained in animal welfare and skilled in providing health care to abandoned animals, and ensure the necessary financial support for the operation of the animal shelter.<sup>53</sup>

The owner of an animal shelter is obliged to treat the abandoned animals with due care. The shelter owner is responsible for the animals' life and health care, and shall make provisions for the animals' basic physiological needs.<sup>54</sup> The shelter owner is obliged to keep records on all abandoned animals placed in his/her care for 3 years from the date of entering the abandoned animal into the records.<sup>55</sup> The shelter owner is also obliged to have a ready-made plan for the relocation and accommodation of animals placed in his/her care in case of a natural disaster or in case of closing down the shelter.<sup>56</sup>

The black letter of the law also obliges the shelter owner to provide for the accommodation and due care of each abandoned animal, to make an effort to locate the animal owner/holder and, upon the owner's request, to return the animal to the owner/holder within a period of 15 days from the date of receiving the animal in the shelter. Upon the expiry of this term, the owner of the animal shelter may give the abandoned animal away or take step for its adoption or placement in foster care.<sup>57</sup>

In case the animal shelter has been established by a local government unit, it is the duty of the local government and its competent body of authority to make arrangements for the collection and transport of abandoned animals to the animal shelter and, particularly, to ensure that the animals are subject to "a minimum degree of pain, suffering, fear and distress".<sup>58</sup> In case some abandoned animals are sick or suffering from some disease, such animals must receive relevant professional treatment by veterinary services.<sup>59</sup>

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<sup>49</sup> See: Article 54, para. 1 and Article 66, para 1 of the Animal Welfare Act of Serbia

<sup>50</sup> See: Article 68 of the Animal Welfare Act of Serbia

<sup>51</sup> See: Article 69, para 1 and 2 of the Animal Welfare Act of Serbia

<sup>52</sup> See: Article 61 of the Animal Welfare Act of Serbia

<sup>53</sup> See: Article 62 of the Animal Welfare Act of Serbia

<sup>54</sup> See: Article 63 of the Animal Welfare Act of Serbia

<sup>55</sup> See: Article 63, para 3 of the Animal Welfare Act of Serbia

<sup>56</sup> See: Article 65, para 1, item 5 of the Animal Welfare Act of Serbia

<sup>57</sup> See: Article 65, para 1 (items 1, 3 and 4) and para 2 of the Animal Welfare Act of Serbia

<sup>58</sup> See: Article 66, para 1 of the Animal Welfare Act of Serbia

<sup>59</sup> See: Article 66, para 1- 4 of the Animal Welfare Act of Serbia

In order to provide for the welfare of the animals placed in its care, the animal shelter which is established by the local government unit must constantly work in close cooperation with the local veterinary services and animal protection organizations. In addition, the shelter administration is obliged to make the information on the abandoned animals placed in its care available to the general public and to other shelters.<sup>60</sup>

In case the animal owner cannot be located or in case an abandoned animal cannot be adopted or placed in foster care within a period of 30 days from the date of placing the animal in the shelter, such an animal shall be treated in compliance with the Animal Population Control Program aimed at controlling and reducing the overpopulation of abandoned dogs and cats.<sup>61</sup>

##### 5. LEGAL TREATMENT OF ABANDONED ANIMALS IN THE TERRITORY OF THE CITY OF NIŠ, AND SOLUTIONS *DE LEGE FERENDA* WHICH SHALL BE ADOPTED IN RESPECT OF THEIR WELFARE

Even a glance at the legal solutions contained in the Animal Welfare Act of the Republic of Serbia clearly reveals that this Act is a qualitative step forward in the legal treatment of abandoned animals. Yet, as pointed before, the primary burden in the implementation of the legal provisions on abandoned animals rests with the local government units and their competent authorities.

Owing to the Animal Welfare Act, the City of Niš has finally abandoned the long-standing practice of using inhuman methods of capturing and killing stray dogs which has proven to be highly inefficient. This year, the local government has also fulfilled its obligation to prepare an Animal Population Control Program aimed at controlling and reducing the number of abandoned animals. However, this is where all the activities have come to a halt.<sup>62</sup>

According to the available data, there is a total number of 4,500 stray dogs in the territory of the City of Niš. Unfortunately, the City authorities cannot provide an adequate shelter for the accommodation of all these animals; as a matter of fact, the available financial support (a total of 6,858,000 RSD which was approved under the City budget in the year 2011 to cater for this category of animals) is only sufficient for the veterinary treatment of some 550 abandoned dogs.<sup>63</sup>

Given the fact that abandoned animals and their uncontrolled reproduction give rise to a large number of environmental, aesthetic, sanitation, health, economic and social safety issues, the solution to these problems rests in the following activities:

1. ensuring an active involvement of the City of Niš and other local government authorities in building adequate shelters both for abandoned cats and dogs;
2. making provisions for a consistent implementation of the Animal Population Control Program aimed at reducing the over population of abandoned animals, which shall include: a) marking all cats and dogs of known owners by microchip implants

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<sup>60</sup> See: Article 67, para 2 of the Animal Welfare Act of Serbia

<sup>61</sup> See: Article 67, para 3 of the Animal Welfare Act of Serbia

<sup>62</sup> The Program is part of the Action Plan of the Animal Sanitation Service of the City of Niš for the year 2011. The Program is available at the website of the City of Niš.

<sup>63</sup> The data are taken from the Action Plan of the Animal Sanitation Service of the City of Niš for the year 2011.

- for identification purposes,<sup>64</sup> the costs of this service shall be subject to a symbolic/minimal fee; b) keeping records on abandoned animals in the Central Database,<sup>65</sup> including all changes in animal status or condition (e.g. sterilization or castration, the number of delivered puppies or kittens, the cause of death, etc); c) spaying stray cats and dogs, placing them in foster care or returning them to their former habitats subject to an obligation to provide for their nutrition and veterinary healthcare;
3. developing general information and educational programs aimed at promoting responsible animal ownership;
  4. providing financial and technical support to animal protection societies which actually play the key role in placing abandoned animals for adoption or foster care;
  5. establishing closer liaisons and communication between the local government units (authorities) and the non-governmental sector in order to ensure additional funds for campaigns and activities involving the housing of abandoned animals;
  6. envisaging more stringent sanctions for animal abandonment which should be based on the legislative models and practice of Switzerland, Germany and Great Britain;
  7. introducing a penal measure of taking an abandoned animal from its owner on the permanent basis, provided that a veterinary inspector has established that the animals has been neglected or kept in inhuman conditions<sup>66</sup>
  8. making provisions for issuing a penal measure prohibiting the owner of an abandoned animal to keep other animals (pets) or to perform any professional activity involving the use of animals;
  9. introducing a tax on keeping domesticated animals (pets), providing that this revenue should primarily go towards covering the costs of veterinary treatment of abandoned animals and establishing shelters in the local communities.

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<sup>64</sup> The proceeding on marking dogs is specifically regulated in Articles 11 - 14 of the Rules on Marking Dogs and Keeping Records on Marked Dogs (Official Gazette of RS, no. 115/2005 and 33/2007).

<sup>65</sup> The database is envisaged in the provisions contained in Articles 6 - 8 of the Rules on Marking Dogs and Keeping Records on Marked Dogs.

<sup>66</sup> Under the Serbian Animal Welfare Act, a veterinary inspector has the authority to issue a provisional order to take the animal away from the owner on the temporary basis, provided that the owner has acted in contravention of the provisions contained in this Act. See: Article 79, para. 1, item 2 of the Animal Welfare Act.

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## **PRAVNA ZAŠTITA NAPUŠTENIH ŽIVOTINJA U SVETLU ZAKONA O DOBROBITI ŽIVOTINJA**

**Nataša Stojanović**

*Problem napuštenih životinja nije svojstven samo zemljama u tranziciji, uključujući i Republiku Srbiju. Ekonomska kriza, koja pogađa gotove sve zemlje sveta, direktno utiče na povećanje broja napuštenih životinja. Republika Srbija je, po ugledu na zakonodavstva mnogobrojnih evropskih država, donela Zakon o dobrobiti životinja, 2009. godine, kojim su postavljeni pravni temelji za drugačiji, kvalitativno novi i generalno manje diskriminatorski odnos čoveka prema životinjama. Donošenje zakona, kojim se prvi put na teritoriji Republike Srbije omogućava integralna pravna zaštita životinja, nameće nekoliko pitanja: U kojoj meri Zakon o dobrobiti životinja Republike Srbije štiti napuštene životinje? Da li je dosadašnja primena ovog Zakona, i pratećih propisa, dala konkretne rezultate na planu smanjivanja broja napuštenih životinja? Sa kojim problemima se suočava grad Niš u primeni slova Zakona o dobrobiti životinja? Šta predviđa Program kontrole i smanjenja populacije napuštenih pasa i mačaka na teritoriji grada Niša, i koliko su realni izgledi da se postavljeni ciljevi realizuju u skorije vreme? To su samo neka od pitanja na koje autor pokušava da da odgovor.*

*Ključne riječi: dobrobit životinja, odgovorno vlasništvo, napuštene životinje, pravni tretman napuštenih životinja.*