

Original Scientific Paper

**ANIMAL PROTECTION FROM KILLING AND ABUSE
IN THE EUROPEAN AND SERBIAN CRIMINAL LAW ***

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Abstract. *In this paper, the author primarily deals with an issue of animal protection against unnecessary killing, torture and abuse in the EU law, with specific reference to the Serbian legislation on this issue. Many European countries have introduced into their criminal legislations some legal provisions defining the act of animal killing and abuse as a criminal offense. In order to observe the standards, forms and intensity of state response to men's cruelty to animals, the author will analyze the legal solutions adopted in Germany, France, Italy, Slovenia, Montenegro and Croatia, and compare them with the Serbian legislation. The author has endeavored to provide answers to a number of questions: Are the current legal solutions relevant and sufficient? Does the legal protection include all animals? What is the subject matter of protection: the human being and his/her feelings towards some animals, or an animal itself? Is the prescribed punishment adequate to the social danger stemming from this criminal act? Concurrently, the author has endeavored to point to the possible courses of action which would provide for a more efficient and high-quality protection of animals from unnecessary killing and abuse in the future.*

Key words: *animals, killing, abuse, criminal law, protection.*

1. INTRODUCTION

The relationship between people and animals is characterized by a number of paradoxes, which are apparent in the extreme expressions of infinite love, inexplicable hatred

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and the most ruthless forms of cruelty to animals. Human violence against animals has existed for centuries. Certain kinds of violence toward animals (such as: hunting, fishing and killing them for food) have almost always been viewed as acceptable. The deliberate torture of domestic animals has also been regarded as the owners' justifiable dominion over their property (Livingston, 2001). Bearing in mind that animals are being killed, exposed to various afflictions and used for different purposes almost on a daily basis, there are numerous ethical, legal, sociological, economic issues and dilemmas on the status of animals in society, as well as on the extent to which their interests should be accounted for.

At present, when we all witness the growth of various forms of violence, the problem of cruelty to animals has been increasingly drawing the attention of the community. Being a necessary condition for maintaining a healthy environment, the legal protection of animals has become one of the prominent issues at the end of the second and the beginning of the third millennium. In the legal framework regulating various criminal offences against the environment, the criminal law protection of animals has a central position.

The paper focuses on current tendencies in providing different kinds of animal protection at both national and international level. It primarily deals with the issue of animal protection against unnecessary killing and abuse in the European law. In order to observe the standards, forms and intensity of state response to men's cruelty to animals, as well as the conditions for providing adequate protection, the author of this paper analyses the current solutions of European legislators. As a matter of fact, the criminal legislations of many European countries contain legal provisions defining the act of animal killing and abuse as a criminal offense. The author will explore the legislations of France, Italy, Germany, Slovenia, Croatia and Montenegro, with specific reference to the Serbian legislation on animal protection from inhuman treatment.

2. THE DEVELOPMENT AND THE SCOPE OF LEGAL ANIMAL PROTECTION

In different historical periods and legal systems (even those proclaiming the highest standards of justice), animals have always been considered as objects of man's possession rather than animate beings in their own right. In law, animals are regarded as property: they are goods to be bought and sold, acquired and maintained. This principle is deeply interwoven into the law.¹ Over time, the law has evolved as the society has moved away from the initial perception of animals as mere property to be exploited for human purposes.

The concepts of animal protection and animal welfare have developed from the philosophical concepts and attitudes to animals. Among them, the philosophical thought of Jeremy Bentham was the cornerstone of the animal protection program. He wrote: "The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The question is not *Can they reason?* nor *Can they talk?* but *Can they suffer?*" (Bentham, 1789). Hence, given the fact that animals are sentient beings, they need legal protection.

The first legal act that incriminated cruelty to animals and their inhuman treatment, generally known as "the Body of Liberties", was passed in 1641 by the puritans of the

¹ The Evolution of Anti-Cruelty Laws in the United States, *Animals and their Legal Rights: A Survey of American Law from 1641 to 1990*, 1-2, Emily Steward Leavitt & Diane Halverson eds., 1990.

Massachusetts Bay colony. The first systematic legislation on animal protection in Europe was instituted in the 19th century England, which adopted the first "Act to prevent the cruel and improper treatment of cattle" in 1822. The legislation on animal welfare was rounded off almost a century later, in 1911, by adopting the Animal Protection Act.

Today, we bear witness to the daily killing and various forms of inhuman treatment of animals. Never before has the mankind caused animals so much suffering. Some forms of cruelty to animals are so atrocious that they can hardly be regarded as having been conceived by a sane human mind; for example, these acts include: killing animals with guns or cold weapons (swords, axes, and hammers), animal poisoning, hanging dogs and cats, throwing puppies into the river, tying animals' limbs with wire, and particularly organizing the animal fights.

The contemporary animal legislations vary from one country to another, including substantial differences in the applicable laws designed to protect animals (Tomaselli, 2003)² but we can say that they pay more attention and attach increasing importance to animal welfare by providing various forms of protection of various animal species. The animal welfare position is widely accepted in the contemporary law, both at the international and national levels (More: Krstić, 2011) The legal position on *animal welfare* implies that there is nothing inherently wrong about using animals for human purposes, such as food, clothing, entertainment and research, but that it should be done in a humane way that minimizes unnecessary pain and suffering (Lubinski, 2004)³ "*Welfare is a wide term that embraces both the physical and mental well-being of the animal.*"⁴ It is "*a state of complete mental and physical health, where the animal is in harmony with its environment*" (Hughes, 1976).

Hence, the legal provisions against animal cruelty are designed to prevent needless cruelty to animals rather than to prevent animal killing for other purposes such as food, or they concern animal species (such as those regarded as pets) which are not used for food in the country involved. Generally, animal abuse nowadays is considered socially unacceptable behavior that intentionally causes unnecessary pain, suffering or distress to and/or death of an animal. This definition excludes socially acceptable treatment such as hunting, some veterinary practices and certain agricultural practices (Ascione, 2001),⁵ using animals for experiments (More: Stojanović, 2009), etc.

3. CRIMINAL LAW PROTECTION OF ANIMALS IN EUROPE

- GENERAL ISSUES -

In Europe, there is a long tradition and an active desire for animals to be treated decently. In the international context, Europe is the only region so far that has adopted in-

² Available at: <http://www.animallaw.info/articles/ddusicacl.htm#IIA>.

³ Take note that the goal is to regulate unnecessary pain and suffering, not all suffering. This means that it is all right to eat animals, to use them for some experimentation, to domesticate them, and in some circumstances to kill them. Moreover, the effectiveness of welfarism in protecting animals depends on how broadly or narrowly a society chooses to define "unnecessary" in various circumstances.

⁴ *Brambell Report* (1965)

⁵ The author argues that animals need only one right: the right not to be property. Available at: http://www.ncjrs.gov/html/ojjdp/jjbul2001_9_2/contents.html.

ternational conventions in order to resolve the questions of animal care and welfare (Paunović, 2005). The implementation of the highest standards in ensuring animal welfare can be considered as a kind of "legal revolution". However, it should be noted that this protection is partial and that it includes only some animal species that are protected by special regulations, while most of "the animal world" has remained out of reach of legal norms. The main objective of animal welfare legislation is animal protection from unnecessary suffering and harm. It is considered that all European countries should follow this example and create subject-specific regulations for companion animals, farm animals, research animals and wildlife, because each class of animal has its distinct needs (Tomaselli, 2003).

In the European legal area, there are several important conventions, resolutions and recommendations that have been adopted to protect the interests of animals. These documents, adopted by the Council of Europe⁶ and the institutions of the European Union, have made a significant impact on the progressive movements in the legislations of the European countries.⁷

In order to protect animals, their life and physical integrity, many European countries have adopted the criminal law provisions that regulate the killing and abuse of animals as a criminal offence, under certain conditions.⁸ The criminal law protection, as a rule, is very narrow. In order to be considered as a criminal act, an act of animal killing and abuse must be unlawful or unnecessary. Entire classes of animals are excluded from criminal law protection, such as farm animals, animals used for medical or research purposes, animals used in entertainment and recreation venues such as circuses and zoos (Hill, 2008).⁹ In practice, dogs and cats, as most common pets, are subject to the criminal law protection.

The issue of violence against animals is very complex. Given the fact that these acts are committed against the life and body of living beings, they are also a threat to the environment; yet, some deviant forms of animal behavior are closely associated with various forms of violence against people (More: Duncan, Thomas, Miller, 2005; Livingston, 2001). Of course, diverse cases of juvenile crime do not provide convincing evidence that every child animal abuser is to become an adult offender, nor does it demonstrate that all violent adult offenders started out as animal abusers when they were children.

Therefore, measures taken to protect the animals are intended to prevent inhumane animal treatment, to subject the offenders to criminal sanctions for causing unjustified

⁶ So far, the Council of Europe has adopted six conventions on animal welfare: the European Convention for the Protection of Animals during International Transport (1968, ETS. 065, revised in 2003); the European Convention for the Protection of Animals Kept for Farming Purposes (1976, ETS. No. 087); the European Convention for the Protection of Animals for Slaughter (1979, ETS. No. 102); the Convention on the Conservation of the European Wildlife and Natural Habitats (1979, ETS. No. 104); the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1986, ETS. No. 123); and the European Convention for the Protection of Pet Animals (1987, ETS. No. 125).

⁷ The EU policy on animal protection and welfare is based on Article 13 of the Treaty on the Functioning of the European Union (signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009). We shall also mention the EU *Action Plan on the protection and welfare of animals (2006-2010)*, adopted by the European Commission, as well as the *EU Strategy for Protection and Welfare of Animals (2012-2015)*. See: http://ec.europa.eu/food/animal/welfare/actionplan/actionplan_en.htm

⁸ As the criminal law concept of a victim is constantly expanding, including animals as crime victims into the scope of protection is a natural progression in the development of the law.

⁹ Available at: <http://www.animallaw.info/articles/arus4jouranimallaw19.htm>

harm to other creatures, but also to protect people. The awarded penalties range from misdemeanor fines to a recent trend towards making such conduct a felony (Lubinski, 2004). One of the principles in the animal protection policy should be to impose penalties as high as possible, which would reflect how seriously every country takes this issue.

4. CRIMINAL LAW PROTECTION OF ANIMALS IN SOME EUROPEAN COUNTRIES

In this part of the article, we will provide an overview of how the animal protection from killing and abuse is regulated in some European legal systems.

Germany is among the European countries that have reached the highest level of animal protection, which only a few countries can be compared with. Germany is the first EU member country (and the second country in Europe, after Switzerland) which raised the protection of animals to the constitutional level, by adopting the amendments on the Basic Law for the Federal Republic of Germany in 2002.¹⁰

Animal protection in Germany is laid down very widely in a series of regulations, but we have to emphasize the special significance of the Animal Protection Act, adopted in 1972¹¹ and revised several times (1986, 1998, 2001, 2006, 2010). It is one of the strictest legislations in the world which provides an extensive protection to animals. The primary objective of the animal welfare legislation in Germany is to protect the life and well-being of animals as fellow creatures. Article 1 provides that “Nobody may injure or cause suffering to an animal without a sound reason.” The basic characteristic of this Act is to provide a wide scope of protection of both domestic and wild animals from all forms of cruel treatment. This Act also predicts both misdemeanor and criminal offence penalties for the unlawful conduct to animals. The criminal law protection is provided only for vertebrates, as beings which have been scientifically proven to be able to feel pain and suffering. It is illegal to kill a vertebrate animal without a sound reason, to brutally inflict severe pain or suffering, or to inflict prolonged or repeated severe pain or suffering. The penalty for such a crime is a term of up to 3 years’ imprisonment or a fine.¹² The law also provides for the possibility of seizing the abused animal from its owner, as well as imposing a relevant penalty (fine) for illegal acts that do not contain the elements of a crime (Art. 18-19).¹³

¹⁰ See: Article 20a of the Basic Law for the Federal Republic of Germany (BGB I.S.1): “Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”

¹¹ *Tierschutzgesetz*, (BGB I. I.S. 1277).

¹² Until the 2006 amendments, the maximum imprisonment sentence was two years. Unfortunately, penalties for those convicted of animal abuse are, in reality, rather lenient. *Tierschutzgesetz* requires the state authorities to employ an enforcement officer and suggests additional consultation with a veterinary officer (More: Natrass, 2004). Available at: http://www.animallaw.info/journals/jo_pdf/vol10_p283.pdf

¹³ It is very important to emphasize the fact that Article 90a of the German Civil Code recognizes that animals are not things. *Bürgerliches Gesetzbuch*, 1896 (BGBI. I.S.42, 2909; 2003 I.S. 738).

France has a long tradition of legal protection for animals.¹⁴ The French Penal Code¹⁵ (in Book V regulating “Other Felonies and Misdemeanours“, Title II dealing with “Other Provisions“) contains a legal provision defining “serious maltreatment or acts of cruelty towards animals” as a felony. Article 521-1 (paragraph 1) of the Penal Code stipulates that unnecessary infliction (in public or otherwise) of harm and serious maltreatment, including sexual abuse or the commission of an act of cruelty on any domestic or tame animal, or any animal held in captivity, is punishable by two years' imprisonment and a fine of €30,000. Just like in Germany, the French legislator decided to tighten the original penalty of imprisonment, which amounted to six months for this crime.¹⁶ As an additional penalty, the court may impose a prohibition (permanent or otherwise) against keeping an animal. The provisions of this article are not applicable to bullfights where an uninterrupted local tradition has been established, nor do they apply to cockfights in localities where an uninterrupted tradition has been established.¹⁷ The penalties set out in the first paragraph apply to any establishment or any new centre for organizing cockfights. The same penalties also apply to the abandonment of a domestic or tamed animal, or of an animal held in captivity, with the exception of animals used for repopulation purposes (More: Van Oosterom, 2005).¹⁸ Carrying out experiments or experimental scientific research on animals without complying with the provisions laid down by Decree of the *Conseil d'Etat* is also punishable. (Art. 521-2)

In **Italy**, it took a million signatures and a three-year media campaign to adopt amendments to the Italian Penal Code.¹⁹ In the Title IX-bis (Art. 544-*bis* to 544-*sexies*), the legislator introduced a new kind of crime called “Offences against the feelings for animals”. The object protected by the law is the feeling towards animals or the sensitivity of humans to animals but not the animal itself. The legislator has regulated in detail various aspects of animal killing and abuse, and designed various sanctions depending on the method of their execution. So, any person who, using unnecessary cruelty causes the death of an animal shall be punished by imprisonment ranging from three to eighteen months (*bis*). But, a person who has caused an injury to an animal, abused it or exposed the animal to excessive work but without cruelty shall be punished with a term of imprisonment ranging from three months to one year, or by a fine ranging from 3,000 to 15,000 €. The same penalty applies to anyone administering prohibited drugs to animals or subjecting them to treatment that would harm their health. A higher penalty is provided for

¹⁴ The first Act regulating the abuse of domestic animals in France was passed in 1850. In 1861, the protection was extended to domesticated animals kept in captivity.

¹⁵ Act no. 94-653 of 29 July 1994, Article 9 (Official Journal of 30 July 1994); Act no. 99-5 of 6 January 1999, Article 22 (Official Journal of 7 January 1999); Act no. 2004-204 of 9 March 2004, Article 50 (Official Journal of 10 March 2004).

¹⁶ Note that a sentence of imprisonment and a fine are not alternative in France; thus, they may be imposed cumulatively.

¹⁷ Organizing cockfights is a crime in France but there is an exemption under paragraph 3 of Article 521-1 of the Penal Code. Thus, cockfighting is allowed in the Nord-Pas de Calais region, in Metropolitan France, and on Réunion Island; there are five officially authorized *gallo-dromes* (i.e. cockfighting arenas). The Nord-Pas-de-Calais has a dozen *gallo-dromes*.

¹⁸ Available at: <http://www.animallaw.info/nonus/articles/arfrintro.htm>

¹⁹ They include provisions on the prohibition of cruelty to animals and their use in illegal or unauthorized fighting competitions, Legge 20 luglio 2004, n.189, *Gazzetta Ufficiale* n. 178, 31 luglio 2004.

anyone who organizes or promotes shows and events involving torture or cruelty to animals. The prescribed sentence is a term of imprisonment ranging from four months to two years, and a fine ranging from 3,000 to 15,000 €. But, the sentence of imprisonment ranging from one to three years and a fine ranging from 50,000 to 160,000 € will be imposed on any person who promotes, organizes or holds animal fights or unauthorized competition between animals that may jeopardize their physical integrity. The same penalty also applies to owners or keepers of animals used in fights and competitions. Last but not least, anyone who abandons a pet will be punished by a term of imprisonment of up to one year or a fine from 1,000 to 10,000 €. The same punishment is prescribed for anyone who keeps animals in conditions incompatible with their nature, and inflicts them great pain and suffering.²⁰

In **Slovenia**, the legal protection of animals has a significant position in the Slovene legislation,²¹ where animals are a constitutional category. Article 72 of the Constitution²² indicates that the protection of animals against cruelty is to be regulated by relevant legislation. In this context, the Animal Protection Act²³ regulates many aspects of animal welfare. *Inter alia*, this Act provides definitions of animal abuse specifying cases when it is allowed or not. The Criminal Code of Slovenia²⁴ in Chapter 32 regulating “Offences against the Environment and Natural Resources” provides (in Article 341) that anyone who is cruel to animals or causes them unnecessary suffering will be punished by a fine or imprisonment up to one year.²⁵ Anyone who tortures, abuses, mutilates or causes a cruel death to a number of animals shall be punished by a term of up to two-year imprisonment (formerly one year).

In **Montenegro**, the European standards of animal protection were introduced by adopting the Animal Welfare Protection Act²⁶ which provides protection for all animals, with some exceptions.²⁷ This Act regulates the protection of animals against cruelty, their keeping and breeding, killing and slaughter, transport and experiments, and other issues of importance to the welfare of animals. The Criminal Code of Montenegro,²⁸ in Chapter 25 dealing with “Offences Against the Environment and Spatial Planning”, defines the act of animal killing and torture as a felony. Any person who (in violation of the provided regulations) kills, harms or tortures an animal, or causes a substantial damage to or destroys its habitats or its wider surroundings, shall be punished by a fine or a term of up to one-year imprisonment. But, if this act is committed as a result of negligence, the offender shall be punished by a maximum sentence of three years’ imprisonment. The legislator

²⁰ Also, the law provides for 1/3 or 1/2 higher penalties as compared to the prescribed amount if the death of animals is caused by different forms of abuse, or if the act has been committed for gambling purposes, etc.

²¹ In addition to legal protection, Slovenia instituted two significant bodies: the Animal Welfare Council (AWC) established in 2001, and the Ethical Committee for Experimental Animals, established in 2005.

²² „Uradni list RS“ (Official Gazette of RS), No. 33/1991.

²³ „Uradni list RS“, (Official Gazette of RS), No. 98/1999.

²⁴ „Uradni list RS“, (Official Gazette of RS), No. 55/2008, 66/2008, 39/2009, 55/2009, 56/2011, 91/2011, 34/2012, 50/2012.

²⁵ Note that the first prescribed penalty for this offence was three months’ imprisonment, which was later increased to six months’ imprisonment, and eventually (in 2011) it has been tightened to one-year imprisonment.

²⁶ „Službeni list CG“(Official Gazette of MN), No. 14/08.

²⁷ See: Art. 2. of Animal Welfare Protection Act.

²⁸ „Službeni list RCG“(Official Gazette of MN), No. 70/2003.

has envisaged a more aggravated form of this crime in case where the act of killing or harm refers to animals enjoying special protection. The perpetrator of this crime will be punished by a term of imprisonment ranging from six months to five years.²⁹

In *Croatia*, the vertebrate animals enjoy protection under the Animal Protection Act,³⁰ which includes protection of their life, health and welfare. This Act prescribed fines for different misdemeanors against animals.³¹ The protection of animals against cruelty is provided in the Criminal Act,³² in Chapter 19 dealing with “Offences against the Environment”. Pursuant to Article 260, anyone who severely abuses an animal, exposes it to unnecessary suffering or causes it unnecessary pain or suffering shall be punished by a fine or a term of imprisonment not exceeding six months. But, anyone who commits this criminal offence for gambling purposes or some other benefit shall be punished by a fine or a term of imprisonment not exceeding one year. In these cases, the legislator requires proof of intent. Yet, in some cases, the legislator incriminates negligent conduct. It should be the case when a person negligently withholds food or water or otherwise exposes an animal to suffering for a long time during its transportation. The prescribed penalties are a fine or a term of imprisonment not exceeding three months.

Upon analyzing the above solutions in some European legal systems, we may conclude that in most of these countries the act of animal killing and abuse has been envisaged as a criminal offence only recently. As a rule, the legal provisions on this offence are contained in the respective Criminal Codes of these countries, with very few exceptions. Moreover, there is a diversity of legal solutions on the basic and aggravated forms of this criminal offence, as well as on various forms of punishment and degrees of culpability for this criminal conduct. Some states have approached the legal problem quite seriously, specifying in detail various forms of cruelty to animals and classifying them according to the degree of culpability and the penalty amounts. All legislations incriminate such behavior when committed with intent (premeditation) but some national legislations also incriminate certain types of negligent behavior.

Although animal cruelty laws vary considerably as to the scope and nature of the prohibited activities, the prohibited criminal acts can be divided into four general but largely overlapping categories: (a) cruel mistreatment of animals; (b) acts of severe neglect and abandonment; (c) unjustified killing; and (d) animal fighting. Animal protection is not comprehensive and it usually refers to vertebrates.

We may certainly object to lenient penalties which are not in accordance with the severity of the criminal offence and the ensuing social danger. Some states have already responded in this regard, envisaging more rigorous penalties for cruelty to animals. It is important to ensure that penalties are set high enough in order to achieve the preventive and repressive objectives. Yet, there is a general impression that the current penalties are below the required minimum and completely incompatible with the serious nature and social impact of this crime.

²⁹ See: Art. 307. of the Criminal Code of Montenegro.

³⁰ “*Narodne novine*” (National Gazette of RC), No. 135/06.

³¹ See: Art. 66-68.

³² “*Narodne novine*” (National Gazette of RC), No. 110/97 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11

5. ANIMAL PROTECTION FROM KILLING AND ABUSE IN THE SERBIAN CRIMINAL LAW

In the past years, the Republic of Serbia has exerted considerable efforts to improve the welfare of animals in the national legislation. The framework for promoting animal welfare was established by the first Resolution on Animal Protection (proposed by the Serbian association for animal protection ORCA, 2005)³³, which was broadly supported in the professional and political circles alike. The determination of the state to develop an adequate animal protection system is reflected in the adoption of a large number of legal acts related to animals, the ratification of the Convention of the Council of Europe on animal welfare, as well as in the fact that the Serbian Government issued an official Conclusion (in 2009) supporting the UN Universal Declaration on Animal Welfare.

Unfortunately, the Republic of Serbia is among the last states in the Balkans to have envisaged appropriate legal protection against killing and cruelty to animals, first by introducing relevant legal provisions in their criminal legislations and subsequently by providing a more comprehensive protection of animal well-being by enacting special statutory acts (regulations). These statutory acts are aimed at improving the animals' overall living conditions, and their adoption is a result of the Government's activities to harmonize the Serbian legislation with the EU regulations and implement the European standards on animal protection and welfare.

The legal framework for animal protection has been gradually developing but the main issue will certainly be its implementation. In this paper, the author will present the current solutions contained in the Serbian legislation on the protection of animals against killing, abuse and inhuman treatment, as well as the practical implementation of these legal solutions.

A. The positive-law aspect of animal protection

In the legal system of the Republic of Serbia, there is a number of criminal offences whose legal framework provides for the protection of animals. Most of the animal-related criminal offences are contained in the Serbian Criminal Code³⁴ whereas some more specific offences have been envisaged in the subject-specific criminal acts. In the Serbian Criminal Code, the criminal offences against animals have been included in the corpus of criminal offences against the environment (Chapter 24 of the CC), which is also the most commonly accepted legal solution in foreign legislations (Jovašević, 2011). Article 269 contains the specific provisions dealing with the criminal offence of killing and wanton cruelty to animals.

The Serbian criminal legislation has been providing a legal framework for the protection of animals against cruelty ever since the Criminal Code took effect on 1st January 2006. The legislator has incriminated the acts of animal killing, torture and abuse, which is a significant step forward in the context of animal protection as one of the important social values the contemporary society rests upon. Thus, the legislator established the legal grounds for combating different cruel and socially unacceptable behavior to animals, which might eventually result in the commission of even more socially dangerous criminal acts.

³³ See: <http://orca.rs/dobrobit-zivotinja-kod-nas>

³⁴ *Službeni glasnik RS* (The Official Gazette of the Republic of Serbia), no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009); hereinafter in the footnotes, the author will use the abbreviation CC (Criminal Code).

First, the criminal legislation incriminates *the act of killing and torturing animals* (which was the original term used in the 2006 Criminal Code). This legal term was adopted from the legal provisions contained in legislations of some former SFRY states. In Article 269 (paragraph 1), the 2006 Serbian Criminal Code prescribed a fine or a term of up to 6 months' imprisonment for any person who in violation of the prescribed legal provisions kills, harms or tortures an animal. In paragraph 2 of this Article, the legislator incriminated a more serious form of this criminal act; thus, if the criminal offence specified in paragraph 1 of this Article results in killing, torture, harm or abuse of a number of animals, or if the offence has been committed against an animal belonging to a specially protected species, the criminal act shall be sanctioned by a fine or a term of up to 3 years' imprisonment.

Yet, terminologically speaking, such a legal solution was not in line with the legal solutions in most of the European legislations. Namely, neither the definition of the criminal act nor the scope of the prescribed penalty complied with the existing European standards. In that context, it was necessary to amend Article 269 of the Serbian Criminal Code.

In the 2009 Act on the Amendment and Supplements to the Serbian Criminal Code, the legislator decided to rename this criminal offence and make it comply with the legal terminology used in the legislation of the EU and the Council of Europe. Thus, the criminal offence was now termed as *an act of animal killing and abuse*, given the fact that legal authors dealing with this matter had been using this term for a long while. The amendments to Article 269 of the Criminal Code were not merely cosmetic but rather substantive. Although the basic definition of this criminal offence contained in the first paragraph remained essentially the same, the wording was significantly changed in comparison to the former legal solution; the amended version provides that anyone who in violation of the prescribed legal provisions kills, harms, tortures or abuses an animal in some other way shall be sanctioned by a fine or a term of up to one-year imprisonment. Thus, animal protection has been extended to include any form of physical, mental, sexual molestation and, in a broader sense, any neglect or abandonment of animals as specific forms of animal abuse. The legislator obviously did not deem it necessary to specify all forms of animal abuse but provided a general definition, which would enable the courts to apply this legal norm in adjudicating different forms of animal abuse.

The legislator has retained the wording that criminal charges shall be instituted only against a person who "in violation of the prescribed regulations" either intentionally undertakes the specified activities against an animal or negligently fails to take some action. The wording in this provision clearly underscores that every single act of animal killing, injury, torture or abuse shall not necessarily constitute a criminal offence unless it is found to be unlawful, i.e. in contravention of the provisions prescribed in the applicable law. Namely, there are some legal provisions making allowances for different forms and methods of killing or harming an animal, in specific circumstances and for specific socially justified purposes but with due consideration to the animal well-being. Thus, the legislator has endeavored to emphasize that every single attack on an animal's life cannot be qualified as a criminal act. This *blanket disposition*³⁵, which implies a violation of

³⁵ In a criminal offence comprising a *blanket disposition*, there is an interdependence and inseparable link between the blanket disposition and the substantive legal provision (most frequently of a non-legal nature), which the disposition rests upon and which is actually used in establishing the nature of a criminal act. If such a substantive legal provision does not exist, there is no criminal act.

some other legislative or statutory act, has caused significant problems in practice which will be discussed later on.

Moreover, the legislator has provided a more stringent punishment ranging from 6 months to one-year imprisonment. In the comparative law, there is a clear tendency towards introducing a more stringent punishment for the perpetrators of criminal offences against animals. Thus, the Republic of Serbia has joined the countries which have instituted this method of fighting against the inhuman treatment of animals.

The commission of this criminal offence includes *the act of animal killing, torture and harm or some other form of animal abuse*. The legal term “killing” implies any obliteration of an animal by using any method or any instrument (such as: a warm/cold weapon, poison, etc). The term “torture” implies any infliction of physical or mental pain and suffering to animals, whereas the term “harm” implies the infliction of any kind of bodily injury, such as wounds, fractured bones or paws, etc. (Batrićević, 2010) The wording “*some other form of abuse*” implies any form of physical, mental or sexual abuse. As previously stated, the committed act has to be unlawful, given the fact that there are legal provisions making allowances for and precisely defining the (humane) method of killing an animal. Considering that these provisions prescribe the specific circumstances and the procedures on taking an animal’s life, any killing or some other form of animal abuse which is contrary to these legal provisions shall constitute a criminal offence.³⁶

This criminal offence may be perpetrated either by the actual commission of an act or by the omission to act, the latter of which implies a failure to act or to provide an animal with food and/or water for a longer period of time (Stojanović, Z., 2007). The author of this article believes that the Serbian Criminal Code could have envisaged a special legal provision on animal neglect or abandonment as a specific form of animal abuse. There are some valid arguments to support this standpoint. First of all, such a provision would send a clear message to the animal owners/holders that they cannot treat an animal as any other object in their possession; moreover, the very fact of being an animal owner makes one responsible for the animals’ life and welfare. Second, the animal desertion or abandonment is a very specific social, health, safety and ecological problem reflected in a growing number of stray animals in the streets. Stray animals are a potential risk to human life and health, either directly (by attacking children and adults) or indirectly (by causing traffic accidents or by man’s unauthorized poisoning of stray animals which endangers human lives/health, etc). It is worth noting that, under the Animal Welfare Act, animal abuse is punishable by fine but only as a misdemeanor, not as a criminal offence (Stojanović, N., 2011).

Apart from the basic definition of this criminal offence, the Criminal Code has preserved the legal solution on the aggravated form of the criminal act of animal killing and abuse, which is now punishable by a more stringent sanction. Thus, if the offence specified in paragraph 1 of Article 269 has resulted in the killing, torture or harm to a number of animals, the perpetrator shall be sanctioned by a fine or a term of 3 years’ imprisonment. By using the legal phrasing “a number of animals”, the legislator has left it to the discretion of the competent court to establish (by taking into consideration the merits of

³⁶ See, for example: *The Book of Rules on the conditions and means of taking an animal’s life, the treatment of animals immediately before slaughter, the method of putting animals to sleep and bleeding animals, the conditions and the method of slaughtering animals without putting them to sleep, and the training program on animal welfare in the process of slaughtering animals* (Official Gazette of RS, no. 14/2010).

each individual case, all the specific circumstances and particularly the kind of animal at issue) whether the act constitutes an aggravated form of animal killing or abuse or not, and to determine a relevant punishment in line with the assessment. The same sanction applies in case when the unlawful act has been committed against an animal belonging to an animal species enjoying special legal protection.

In the 2009 Act on the Amendments and Supplements to the Criminal Code, the legislator has made an extremely significant qualitative step forward in respect of defining the criminal act of animal killing and abuse. Namely, the amended Article 269 contains another aggravated form of this criminal offence. In paragraph 3 of this Article, the legislator stipulates that any person who takes some benefit from organizing, financing or hosting animal fights between animals of the same or different species, or any person who organizes or participates in wagers related to such fights, shall be awarded a cumulative sanction including a fine and a term of imprisonment ranging from 3 months to 3 years. The rationale of this provision is the prevention of increasingly frequent forms of organized dog fights, rooster fights and using other animals for lucrative purposes. These forms of extreme animal cruelty are socially dangerous activities implying a high-level risk and potentially fertile grounds for other forms of criminal behavior.

In legal theory, the nature of the object of protection is frequently a matter of dispute not only in Serbia but also in other countries which have a long-standing tradition of securing animal protection and welfare. Indeed, shall every single animal be the object of protection? As the legal provision does not specify which animal species the criminal offence refers to, it might be concluded that *any* animal is the object of protection. Such a concept would be in compliance with the basic theoretical assumptions of the Biocentric Ethics (Paunović, 2005). Another fairly similar viewpoint is that all the animals from the so-called “animal world” shall be the object of protection (Jovašević, 2009); yet, it has been realized that protection cannot refer to all animals, given the fact that there are special provisions regulating the protection of some animal species that enjoy special legal protection (Lazarević, 2006). Apart from this standpoint, there is an opinion in legal theory that the object of criminal law protection are not and may not be animals but only human beings and other fundamental social values (as specified in Article 3 of the Criminal Code); therefore, the legal framework of this criminal offence actually provides for the protection of a human being and his/her feelings towards some animal species (Stojanović, Z., 2007).

In principle, any animal may be subject to some harmful act. However, there are special provisions envisaging the possibility of obliterating some animals/pests (such as rodents, mosquitoes, grasshoppers, etc) in specific circumstances, in which case the requirement concerning the unlawful conduct would not be met. Moreover, it is highly unlikely that the court would impose a criminal sanction for killing some animal species which are generally regarded to cause fear or disgust (e.g. some wild animals, reptiles or rodents) unless such conduct is established to be unlawful (for example, in case when such animals are kept as pets/companion animals or when they are used in circuses, etc).

The most significant legal document on this issue is the Animal Welfare Act,³⁷ which most comprehensively regulates the issues pertaining to animal protection, their interests

³⁷ The Official Gazette of RS, No. 41/2009.

and well-being. As explicitly stated, this Act is aimed at protecting *sentient animals* which may experience pain, suffering, fear and distress; the legislator has clearly specified that the term “*animal*” is used to refer only to vertebrates. In that context, we may infer that the Serbian criminal legislation provides protection to all those animals whose killing and abuse causes a feeling of compassion in human beings (Stojanović, Z., 2007).

Considering that this criminal offence is included in a special chapter of the Criminal Code dealing with the environment protection, it is also important to emphasize that the object of protection in this criminal offence is the environment as well.³⁸ The environment protection may be an issue in cases where a number of animals have been subject to killing, torture or injury, or in cases where such an act includes animal species enjoying special legal protection. When this criminal offence involves only one animal, it may be assumed to imply only an indirect environment protection (Batrićević, 2010).

The adoption of the Animal Welfare Act has revolutionized the treatment of animals in the national legislation. *Inter alia*, the legislator has made provisions for the protection of animal welfare in the process of taking an animal’s life, keeping, breeding, transporting, trading, slaughtering and experimenting on animals. This Act has regulated numerous aspects of general and special protection of animal welfare, and envisaged relevant penalty (fines) to be imposed on the natural and legal persons who violate these legal provisions.³⁹ The Animal Welfare Act prescribes relevant sanctions in the law of misdemeanors (*infractions*) for a wide range of diverse activities which either directly or indirectly harm or impair an animal’s life and physical integrity. In practice, further problems may be caused by the inadequate clarification of the key issue: when shall some unlawful conduct against an animal be regarded as a misdemeanor and when shall it be regarded as a criminal offence? The fact that this Act, as compared to the Criminal Code, is both *lex posteriori* and *lex specialis* is of no relevance because the issue does not involve a conflict between two sets of criminal law provisions but rather refers to the concurrence of legal provisions pertaining to either criminal law or law of misdemeanors. We may establish the distinction between these unlawful acts by comparing the intensity of the act which caused the animal killing, torture or injury and the degree of social danger stemming from the committed act (Davitkovski, Gocevski, 2011).

In terms of animal fights, the criminal offence exists if the unlawful act has been committed for the purpose of acquiring some financial benefit. In case the legislator has envisaged that some conduct is punishable both as a criminal offence and as a misdemeanor, the criminal offence (as a more serious act) absorbs the misdemeanor (Jovašević, 2006). This circumstance yields a conclusion that the sanction awarded for a criminal offence of animal killing and abuse is the legal ground for excluding the punishment for a misdemeanor, which is envisaged in the Animal Welfare Act; moreover, if the offender has been previously convicted of a misdemeanor, the criminal sanction will incorporate the penalty (fine) awarded for the committed act.

³⁸ Article 3 of the Environment Protection Act (Official Gazette RS, no. 135/2004) specifies that the environment is a complex of natural and man-made values whose complex interrelations constitute the living surroundings and the living conditions.

³⁹ See: Articles 82 - 85 of the Animal Welfare Act

B. Animal protection in practice

The adoption of the Animal Welfare Act is just the first step towards instituting the legal protection of animals. The state reaction to cruelty to animal may not only be confined to the adoption of legal rules; it has to be articulated through immediate action of state authorities as well as through the process of motivating a wider range of social subjects to fight for a more comprehensive animal protection. In order to generate the desired effects, the legal provisions have to be efficiently implemented in practice by the competent state authorities and fully observed by other social subjects.

Given the fact that the criminal law provisions on animal protection have entered the Serbian criminal legislations just a few years ago and that the Animal Welfare Act has been in use only for the last three years, it seems too early to give a proper assessment of their actual efficiency in practice. Yet, relying on the existing judicial practice, we may discuss the first impressions and analyze the major problems.

The criminal prosecution of the offender who has committed an act of animal killing and abuse is in the jurisdiction of the Public Prosecutor's Office at the Municipal Court (as a first-instance court). Acting on a criminal report, the prosecutor raises charges against the person who is reasonably believed to have committed this criminal act. If the public prosecutor finds that there is no legal ground for prosecuting the offender, or if the prosecutor decides to drop the charges, the injured party is entitled to initiate or proceed with the criminal action against the perpetrator within a period of 6 days from the date of receiving the notice that the prosecutor has dropped the charges.

Until the adoption of the Animal Welfare Act, the judicial practice encountered a specific problem related to the blanket disposition contained in Article 269 of the Criminal Code, which stipulates that the criminal offence exists only in case the act has been committed "in violation of the prescribed legal provisions". In practice, for lack of a single document which would provide for a comprehensive legal protection of animals' rights and well-being, the prosecutors often encountered the problem of establishing whether some legal provision had been violated by a specific act. The analysis of the judicial practice has shown that the prosecutors and courts, whenever possible, called upon the violation of the legal provisions contained in the Veterinary Practices Act⁴⁰ and the Game and Hunting Act,⁴¹ whereas in other cases they called upon the violation of some statutory acts (regulations) adopted by local administrations.⁴² The adoption of the Animal Welfare Act will significantly contribute to a more efficient action of prosecutors and the courts. Namely, Article 7 of the Animal Welfare Act provides a comprehensive list of strictly proscribed activities. In a rather casuistic manner, this Article envisages numerous prohibited methods of animals' treatment; thus, in all cases of animal killing and abuse, the prosecution is most likely to call upon some of the enumerated items which specify the

⁴⁰ See, for example: Decision of the Municipal Court in Novi Bečej, K. no. 80/06, of 17.10.2006 and Decision of the County Court in Jagodina, Kž. no. 393/08, of 24.04.2008. The decisions are available in the court archives.

⁴¹ See, for example: Decision of the Municipal Court in Paraćin, K. no. 11/08 of 19.09.2008. The decision has been obtained from the court archives.

⁴² See, for example: Decision of the County Court in Valjevo, Kž. no. 541/07 of 11.12.2007 and Decision of the Fifth Municipal Court in Belgrade, K. no.899/07 of 20.03.2008. The decisions are available in the court archives.

unlawful nature of the committed act. It has been the practice of the Prosecution Office at the Municipal Court in Niš ever since the Act entered into force.⁴³

On the other hand, one of the most significant problems is a failure to trace and punish the criminal offender who has committed an act of animal killing and abuse. Many perpetrators of this criminal act remain largely unknown either due to the lack of interest or inactivity of the competent state authorities or due to the people's indifference to animal suffering. Given the fact that there are no special bodies of authority dealing with animal protection, the state gives more latitude to other criminal offences involving animals. This is particularly true for criminal acts committed against stray animals. Even when animal killers and abusers are well-known to the general public, they are seldom reported, prosecuted and sentenced; in fact, they are most likely to be punished only in some rare cases when they are caught red-handed at the crime scene or when there are witnesses willing to testify about the event in court. The disregard for animal suffering is particularly prominent in cases when a pet is abused by the owner, which is based on the prevailing opinion that the one who feeds and looks after an animal may treat the animal as he/she pleases. For this reason, the owners who commit this act against their own pets often get away with the crime and remain unpunished.

In addition, the Serbian criminal legislation on animal protection is still very lenient in terms of punishment. The prescribed penalties are inadequate regarding the social impact and gravity of this criminal act because they do not make sufficient provisions for general prevention (as one of the basic goals of punishment). The criminal act of animal killing and abuse is an act of mindless rage, aimed at destroying and animal or inflicting heavily bodily injuries to a sentient living being; it is committed neither out of necessity nor in self-defense but for pure pleasure and wantonness. On the other hand, animal killing and abuse points to a potential propensity of the perpetrator towards other diverse forms of violence, including the commission of more serious criminal offences. In that context, the perpetrator's conduct has to be sanctioned in order to prevent a further commission of the same or other criminal acts, and thus exercise special (individual) prevention. Every sentient being deserves an adequate protection of what is deemed to be one's most valuable asset: life, one and only!

The courts' penal policy towards the perpetrators of this criminal act is also very lenient. The punishment of imprisonment is awarded only in exceptional cases and the courts are usually content to issue more lenient sanctions, the most common of which are fine and probation. The courts' penal policy is best illustrated in the official statistics provided in the table below, which shows the number of reported cases related to the act of animal killing and abuse, the number of raised criminal charges, the number of convicted offenders, and the kinds of sanctions awarded in Serbia in the period from 2007 to 2011.⁴⁴

⁴³ The provided data are based on the information obtained from accessing the Municipal Public Prosecution Archives in Niš.

⁴⁴ Source: The Statistics Bulletin: Adult Criminal Offenders – Reports, charges and convictions for the year 2007 (no.502), for the year 2008 (no. 514), for the year 2009 (no. 529), for the year 2010 (546), and for the year 2011 (Statement no. 203), the Republic Institution for Statistics of the Republic of Serbia, Belgrade.

Table 1.

| | Year | 2007. | 2008. | 2009. | 2010. | 2011. |
|--|------|-------|-------|-------|-------|-------|
| Number of reported cases on animal killing and abuse | | 80 | 115 | 86 | 123 | 196 |
| Number of raised criminal charges | | 13 | 37 | 27 | 43 | - |
| Convictions | | 13 | 27 | 22 | 22 | 27 |
| Imprisonment | | 0 | 4 | 0 | 0 | 1 |
| Fine | | 1 | 10 | 11 | 9 | 7 |
| Probation | | 9 | 6 | 15 | 12 | 18 |
| Judicial warning | | 1 | 3 | 1 | 0 | 1 |
| Community service | | 0 | 1 | 0 | 0 | 0 |
| Convicted but exempted from penalty | | 0 | 3 | 0 | 1 | 0 |

There is no doubt that there have been significant developments in terms of instituting animal protection in Serbia, expanding the scope of its protection and providing a more stringent penal policy. There is an increasing number of perpetrators who much more frequently stand trial for committing criminal acts against animals and there is a growing number of cases where judges impose more stringent punishment, such as imprisonment. Yet, all these positive steps forward may not be sufficient as there is a long way to go in order to provide for a more comprehensive and efficient animal protection within the criminal law; moreover, all those in charge of policy implementation will encounter numerous problems and obstacles on the way.

Generally speaking, in order to institute a more extensive animal protection action, it is absolutely essential to raise the general public awareness through strong media campaigns and different forms of education on the need to show some respect for animals as our fellow beings and their dignity. In addition, in order to exercising the protection of animal welfare, it is necessary to ensure the participation of a large number of people in the implementation of the prescribed legislation, to provide larger funds, to establish the so-called Animal Police, to institute an office of an animal advocate (defender) as a specific institution which will be in charge of animal protection and welfare, etc. The major problem is that all these activities have to be funded; currently, the funds are either in short supply or nonexistent. Generally, funding for these purposes has been inadequate and insufficient so far.

6. CONCLUSION

There is a growing awareness in the society on the importance of providing for the observance of animal welfare and animal protection, as an indicator of moral standards. Animal protection has become an important ethical and political issue in many countries. The attitudes on animal cruelty and neglect are changing, and the society is slowly moving toward realizing that a truly civilized community must look after all its members. The observance of animal rights to life and well-being is an attainment of a civilized society, an expression of our humanity and an instrument for protecting our natural heritage.

Every activity aimed at protecting and ensuring the animal welfare must be based on the principle that animals are sentient beings whose specific needs must be taken into account. The protection of this segment of the environment is significant in many ways. Primarily, the importance of animal protection is based on the fact that they are sentient beings, our companions or fellow creatures with which we share a common living environment as well as the most valuable asset of every single living being: life and physical integrity. On the whole, by destroying everything around him, man unconsciously destroys himself and his environment. Therefore, by protecting animals, the man protects himself.

Being profoundly aware of these facts, the contemporary states are exerting efforts (both at the national and international levels) to institute relevant legal frameworks to put the criminal act of animal killing and abuse under control. Upon providing an analysis of the legal solutions contained in the legislations of some European countries, we may point out that the criminal legislations do not provide protection against every single form of animal killing and abuse but only against those acts which are considered to be unlawful and unnecessary. Animal abuse is considered to be a criminal offence only if it is committed with extreme malice and cruelty. Given the fact that animals are still considered to be subordinate to man, his life and his needs, animal protection is not comprehensive (i.e. as it does not include all animals). For the time being, this fact has to be accepted as a reality considering that a higher degree of animal protection would be hard to accomplish.

On the other hand, there is a much larger problem stemming from the arbitrary implementation of laws prohibiting animal cruelty and relatively lenient penalties for animal abuse. It sends a social message that acts of animal abuse or harm (through neglect or deliberate cruelty) are either acceptable as marginal and sporadic occurrences or legally treated as minor criminal infractions (misdemeanours). Even though the prevention and punishment of animal cruelty primarily serves human interests in reducing subsequent delinquency and violent crime, animals are ultimately worthy of protection from unnecessary harm.

In that context, there is a need to provide for a more consistent observance and enforcement of the legal norms on animal protection, as well as to institute more stringent criminal sanctions against the perpetrators of these criminal offences by taking into consideration the overall social impact and gravity of these criminal acts. In order to provide for a more comprehensive animal protection, the existing legal solutions have to be amended by provisions incriminating different forms of animal abuse (such as animal neglect or abandonment, or depriving animals of the bare necessities of life) as well as by provisions incriminating animal fights aimed at obtaining financial gain by exploiting animals. Such a comprehensive regulation of the criminal act of animal killing and abuse will significantly contribute to accomplishing the preventive function of criminal sanctions.

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ZAŠTITA ŽIVOTINJA OD UBIJANJA I ZLOSTAVLJANJA U KRIVIČNOM PRAVU EVROPSKE UNIJE I REPUBLIKE SRBIJE

Novak Krstić

U ovom radu autor se prvenstveno bavi pitanjem pravne zaštite životinja od nepotrebnog ubijanja, mučenja i zlostavljanja u evropskom pravu, sa naročitim osvrtom na pravo Republike Srbije. Mnoge evropske države uvele su u svoje krivično zakonodavstvo norme kojima se ubijanje i zlostavljanje životinja definiše kao krivično delo. Kako bi sagledao standarde, oblik i intenzitet odgovora države na čovekovu svirepost prema životinjama, autor će u radu analizirati rešenja usvojena u pravima Nemačke, Francuske, Italije, Slovenije, Crne Gore i Hrvatske, upoređujući ih sa rešenjima u srpskom zakonodavstvu. Autor će nastojati da odgovori na neka sporna pitanja: Da li su važeća zakonska rešenja kvalitetna i dovoljna? Da li pravna zaštita obuhvata sve životinje? Šta je subjekt zaštite: čovek i njegova osećanja prema određenim životinjama ili životinja, sama po sebi? Da li su predviđene sankcije adekvatne društvenoj opasnosti samog krivičnog dela? Istovremeno, autor će nastojati da ukaže na moguće pravce poboljšanja efikasnosti i kvaliteta pravne zaštite životinja od nepotrebnog ubijanja i zlostavljanja u budućnosti.

Ključne reči: *životinje, ubijanje, zlostavljanje, krivično pravo, zaštita.*